TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OF THE SHAWNEE TRIBE OF INDIANS, FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 19, 1903.

(18,455.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1902.

1 Court of Claims.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians, for the Use and Benefit of the Shawnee Indians,
vs.
THE UNITED STATES. } No. 17210.

I.—*Petition and Amended Petition.*

On the 28th day of September, 1891, the claimant filed his original petition and on the 3d day of August 1892, he filed, in lieu of said original petition, by leave of court, his amended petition which is as follows:

Amended Petition.

Filed August 3, 1892.

To the honorable the judges of the Court of Claims:

1. Your petitioner, Johnson Blackfeather, represents and states that he is fifty years old, a Shawnee Indian by blood and descent, a member of and the principal chief of the Shawnee tribe or nation of Indians, by occupation a farmer; that he resides at or near Vinita, Delaware district, Cherokee nation, Indian Territory.

2. Petitioner further states that he brings this suit in this Court of Claims, as such principal chief of the said Shawnee tribe or nation of Indians, under the provisions of the act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation,
2 and for other purposes," approved October 1, 1890, and an act entitled "An act supplementary and amendatory to an act entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes, approved October 1, 1890,' approved July 6, 1892," to recover and collect from the United States Government the several, respective and aggregate amounts of money herein alleged and set out in payment for the destruction, loss, forcible taking, carrying, and driving away live stock, farm products, household goods, money, and other personal property of divers descriptions and kinds belonging to, owned and possessed by, and the property of the said Shawnee Indians, by white and United States citizens and soldiers, in the State of Kansas and the Indian Territory at divers times and places in the year 1861 and all the time up to and including the year 1866, as more fully appears in the following descriptive list or schedule, setting out the names of the said Shawnees, the property of which they and each of them were despoiled as aforesaid, and the amounts of money claimed for the price or valuation here named by the said claimants, and that the said amount, as to a portion of the said claims, is the amount ascertained by the Secretary of the Interior and by him transmitted to Congress

in the month of January, 1867, with a recommendation that the said amount be paid as to the portion so transmitted at said time, which amount is $109,746.25. (Reference is made to Exhibit D, hereto attached, for the authenticated copy of the letter of the Commissioner of Indian Affairs and the Secretary of the Interior, and as to the additional claims herein alleged and claimed in the said descriptive list and schedule reference is further made, as showing the action, allowance, and findings in all of the said claims, to House of Representatives Executive Document No. 125, 49th Congress, first session; Schedule B, beginning on page 275, continuing on all the subsequent pages, and ending on page 279, inclusive.)

3 SCHEDULE B.

A List of Claims in Favor of Shawnee Tribe of Indians on Account of Depredations Committed by White Citizens since the Treaty of 1854, and for Losses of Property During the Late War.

(Treaty 1854, articles 11 and 14, and sections 2154 and 2155, Revised Statutes.)

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
348	Rogers, Graham	Horses, mules, produce, &c	$2,556 00
349	Barbee, William	Horses, provisions, &c	1,310 00
359	Rogers, William	Mules and money	200 00
360	Dougherty, Martha	Horses and money	602 00
361	Maden, Solomon	Horses, ponies, and hogs	552 00
362	Harvey, John	Horse, mule, and colt	260 00
363	Harvey, Caleb	Two mares, saddles, bridles, hogs	1,390 00
364	Cau-chi-qua	Horses	610 00
365	Red Carpenter	Household goods, hogs, &c	350 00
366	Choteau, Frederick	House burned, groceries, &c., taken.	3,965 00
367	Todd, James, for Frances White	Horse, cow, hogs, &c	312 00
368	Chouteau, Benjamin	Buggy, horses, &c	1,195 00
369	Chouteau, William	Horses and cattle	440 00
370	Pitcher, Mary	Cattle, horses hogs, &c	602 50
371	Sua-qau-coh	Horses and hogs	775 00
372	Saaly Fly	Horse, saddle, colt, &c	260 00
373	Silverheels, Moses	Jewelry and hogs	265 00
374	Widow Wheeler	Cattle, hogs, &c	365 00
375	Barnett, Sally Ann	Horse and cow	165 00
376	Tucker, Charles	Horses, &c	750 00
377	Wheeler, James	Horses and saddle	180 00
378	McLean, Henry	Horse, saddle, &c	221 00
379	McLean, John	Horses, mule, and cattle	950 00
380	Borele, John	Horses, household goods, &c	2,215 00
381	Tiblou, James	Horses, clothing, &c	947 00
382	Deshane, David	Horse, steer, &c	200 00
383	White, Joseph	Horses, mules, &c	3,244 00
384	Wheeler, John	Pony	80 00
385	Wheeler, Polly	Horse and mule	250 00
386	Coffey, Lewis	Mules, horses, &c	1,755 00
387	Britton, Mary	Horses, ponies, &c	265 00
	Carried forward		$27,331 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
	4 Brought forward		$27,331 00
388	Keyser, James	Horses, cattle, &c	1,140 00
389	Coffey, Mary	Do.	2,060 50
390	Big Fox	Horses, furniture, &c	1,890 00
391	Dougherty, David	Horses, hogs, &c	1,082 00
392	White, Frances	Horses, mules, &c	536 00
393	White, Henry	Horses, cows, &c	800 00
394	Blackhoof, Eli	Horses, mules, &c	915 00
395	Dushane, Eli	Horses, mares	545 00
396	Flint, Veaty	Horse, ponies, &c	620 00
397	Barlow, John	Horses, cattle, &c	615 00
398	Chuck-thee	Do.	332 00
399	Rogers, Betsey	Horse, mule, &c	390 00
400	Quinney, Jane	Horses	600 00
401	Prophet, Sally	Horses and mares	1,650 00
402	Graham, Polly	Mare and cattle	220 00
403	Silverheels, John	Horses, cattle, &c., house burned	2,050 00
404	Longtail, Elizabeth	Horses, rails burned, &c	1,670 00
405	Bob, Jane	Horses, cattle, &c	412 00
406	Coster, Nancy	Horses, double wagon, &c	320 00
407	Dushane, Martha	Horses	245 00
408	Perry, James	Horses, &c	480 00
409	Perry, Betsy	Horses and ponies	530 00
410	Dougherty, Elizabeth	Horses and mares	1,020 00
411	Randall, Eliza	House burned, horses, &c., taken	5,650 00
412	Bluejacket, David	Horses, ponies	235 00
413	Swatzell, Catherine	Horses, mules, carriage, &c	2,921 50
414	Vogel, Rebecca	Clothing, silverware, &c	1,360 00
415	Batly, Mary E	Horses, hogs, &c	540 00
416	Dick, Joseph	Horses	480 00
417	Dushane, David J	Horses, rails, corn, &c	1,110 00
418	Fox, John	Horses, oxen, &c	680 00
419	Covnatzer, Samuel M	Horses, cattle, &c	1,975 00
420	Nan-nee-a	Furniture and stock	195 00
421	Hummingbird, Cyntha	Horses	205 00
422	Flint, Joseph	Horses and hogs	450 00
423	Pumpkin, Mrs	Mules and hogs	500 00
424	Pumpkin, John	Horses, harness, &c	520 00
425	Deshane, Henry	Horses, mules, &c	625 00
426	Walton, Anna E	Household furniture, &c	1,226 00
427	Rogers, Polly	Horses and cattle	745 00
428	Whitefeather, Jacob	Horses, mules, &c	1,695 00
	Carried forward		$68,586 00
	5 Brought forward		$68,586 00
429	Jackson, John	Horses, &c	485 00
430	Flint, Haney	Clothing, &c	100 00
431	Big Knife, James	Horse	75 00
432	David, Laura	Mare and saddle	120 00
433	Spybock, Eunice	Horses and hogs	390 00
434	Harvey, James	Horses	700 00
435	Frances, George	Do.	550 00
436	Blanchard, Nancy	Do.	300 00
437	Big Knife, Jane	Do.	380 00
438	Skybuck, Widow	Horses, &c	120 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
439	Possom, John	Horses	$260 00
440	Bigbone, Nancy	Horse, cattle, &c	385 00
441	Elliott, James	Clothing, corn, &c	451 00
442	Charles Tiblow	Horses, &c	425 00
443	James Longtail	Horses and cattle	830 00
444	Elizabeta Longtail	Hogs, &c	110 00
445	Jesse Whitideer	Cattle, horses, &c	1,640 00
446	George Whiteday	Horses, hogs, &c	530 00
447	Martha Dougherty	Heifer, &c	22 00
448	Hannah Rogers	Horses, &c	410 00
449	Nancy Prophet	Grain, &c	650 00
450	Pate-thump-qua	Cattle	60 00
451	William Whiteday	Horses, &c	610 00
452	William White	Horses	350 00
453	Jack Horn	Horse and ponies	570 00
454	Catherine Johnson	Clothing and furniture	252 00
455	Joseph Johnson	Horses, &c	440 00
456	Sanule Tucker	Horse	120 00
457	James Blackfeather	Horses and cattle	1,085 00
458	David Blackfeather	Horses, cattle, &c	1,750 00
459	George Cohen	Horses	230 00
460	Sarah Big Knife	Horses, mules, &c	480 00
461	Thomas Big Knife	Horses	985 00
462	John Dougherty	Horse and saddle	145 00
463	John Perry	Horses	1,495 00
464	Harriett Purcell	Do.	325 00
465	Samuel Garrett	Cattle	225 00
466	Susanna Armstrong	Horses	480 00
467	Polly McDougall	Do.	200 00
468	Eliza Mills	Horses, &c	345 00
469	Stephen Bluejacket	Horses, farming implements, &c	761 00
470	Frances Chautau	Horses, hogs, &c	425 00
	Carried forward		$89,852 00
	6 Prought forward		$89,852 00
471	Toto Whitestone	Horses, &c	210 00
472	Silos Flint	Horses	280 00
473	James Bone	Horses, &c	600 00
474	Mary Blackbody	Do.	358 00
475	Billy Greenfeather	Do.	400 00
476	Lewis McLean	Horses and pony	115 00
477	Edward Crane	Horses	440 00
478	Lewis McLean	Money	75 00
479	Thomas Blackhoof	Horses	175 00
480	William McHearn	Horses, &c	430 00
481	William Frances	Money	100 00
482	General Jackson Rogers	Horse	175 00
483	Ellie Dunn	Saddle	22 00
484	Henry F. Rogers	Horses, mules, &c	664 00
485	Sally Rogers	Do.	445 00
486	Susan Dougherty	Horse, saddle, &c	170 00
487	John Barlow	Hogs	200 00
488	John Parks	Horses, mules, &c	1,195 00
489	George Big Knife	Horses and grain, &c	4,563 00
490	Susan Big Knife	Horses, &c	335 00
491	Mary Johnson	Corn	50 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Valde of property taken.
492	George Dougherty	Grain, &c	$317 00
493	Choteau, William	Horses, &c	465 00
494	Armstong, William	Horses and mule	310 00
495	Spybuck, Frank	Horses	200 00
496	Baptiste, Sarah	Cow, steer, and horse	235 00
497	Summers, Mary	Horse	200 00
498	Logan, Thomas	Horse and pony	100 00
499	Flint, Joseph	Hog	20 00
500	Brown, Theresa	Household goods, clothing, &c	382 00
501	Inra Soup	Field of corn, &c	590 00
501½	Dougherty, Silas	Log houses, cattle, &c	1,296 00
502	Dougherty, Lewis	Horse and saddle	177 00
503	Bluejacket, Charles	Grain, stock, &c	858 75
504	Choceau, Benjamin	Span of horses	400 00
505	Tiblou, Zion	Horses, field of corn	1,395 00
506	Flint, Lazarus	Horses	180 00
507	Tiblow, Mary Ann	300 bushels of corn	150 00
508	Bluejacket, Nancy	Horses, ponies, &c	5,220 00
509	Ki-la-we sa, heirs of (Whiteman, guardian).	Horses, cattle, grain, &c	1,724 00
510	Caboon, George	Cattle, household goods, &c	3,604 45
	Carried forward		$118,966 75
	7 Brought forward		$118,966 75
511	Coxie, Soth	Horses, cattle, and household goods, &c.	6,797 75
512	Chisholm, F. (Jno. Deer, guardian).	Horses, cattle, corn, &c	6,436 50
513	Chisholm, W. E	Provisions, household goods, &c	9,640 00
514	Chisholm, Jackson	Horses, mules, cattle, &c	5,779 00
515	McQueen, Cinda	Horses, cattle, household goods, &c	3,733 75
516	Alberta	Horse, stock, cattle, household goods, &c.	2,504 25
517	Jim Deer	Do.	9,409 85
518	John Deer	Horses, cattle, provisions, &c	11,506 60
519	Wright, Jimmy	Horses, cattle, farming tools, &c	1,757 50
520	Sally	Horses, cattle, corn, &c	3,255 00
521	Little Fish	Household goods, &c	775 25
522	Gibson, Wilson	Horses, stock, cattle, &c	2,067 25
523	Heir of George Blackfoot (Long Jim, guardian).	Horses, cattle, farming tools, &c	1,175 00
524	Rabbit	Horses, cattle, furniture, &c	1,160 00
525	Long Jim	Horses, cattle, farming tools, &c	1,787 50
526	Black Cat	Do.	2,152 50
527	Hill, John	Horses, cattle, farming tools, &c	1,045 00
528	Little Spoon	Stock, cattle, farming tools, &c	748 25
529	Warrive, George	Horses, cattle, &c	1,066 75
530	White Turkey	Horses, cattle, corn, &c	3,745 25
531	George Young	Do.	1,310 70
532	Hill, John (guardian of Little Wildcat).	Horses, cattle, hogs, &c	1,042 00
533	Track	Do.	1,112 75
534	John Duch	Do.	1,380 00
535	Esparnee	Do.	2,714 75
536	Rock	Do.	984 00
537	Bob Deer	Do.	7,909 25

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
538	Hill, Anna	Horses, mules, cattle, hogs, &c.	$5,938 55
539	Jessie	Horse, cattle, household goods, &c.	1,366 60
540	Gobbler	Horses, cattle, farming tools, &c.	990 50
	Carried forward		$220,529 00
	8 Brought forward		$220,529 00
541	White, Nancy	Horses, cattle, household goods, &c.	2,665 85
542	Cologee	Horses, cattle, hogs, &c.	439 25
543	Doctor	Do.	5,259 35
544	John White, chief	Bacon, rails, &c.	5,579 62
545	John White (guardian of Little George).	Horses, cattle, &c.	2,462 20
546	Doctor Jim	Horses, cattle, bacon, &c.	4,870 00
547	Shawnee Jackson	Do.	990 50
548	John Hill	Horses, cattle, corn, &c.	5,795 10
549	Sloathe	Do.	1,829 75
550	Young Man	Horses, cattle, bacon, &c.	3,258 50
551	Jim Sloane	Do.	1,136 00
552	Sally Long Tail	Do.	2,810 00
553	Mule	Do.	740 75
554	John Tomahawk	Do.	1,180 75
555	Shawnee Buck	Horses, cattle, corn, &c.	1,926 50
556	Buckheart	Do.	1,284 50
557	Longman	Do.	1,974 25
558	Joe Billy	Do.	963 00
559	Charlie	Do.	649 00
560	John Sinney	Horses, cattle, mules, hogs, &c.	2,385 75
561	Mrs. McLaughlin	Horses, cattle, corn, &c.	1,297 60
562	Eliza Boots	Horses, hogs, bacon, corn, &c.	1,007 00
563	John Scott	Horses, hogs, corn, &c.	1,335 00
564	Little John	Do.	6,426 00
565	Billy Coon	Do.	1,125 00
566	Milley	Do.	446 25
567	Joe Frank	Do.	737 75
568	Henry Jackson	Do.	1,117 35
569	Nancy Buck	Do.	702 25
570	Nannie Charlie (guardian).	Horses, cattle, outhouses, &c.	506 50
571	Sam	Horses, stock, bacon, &c.	1,822 40
572	Mary Cabbage	Horses, cattle, hogs, bacon, &c.	2,382 25
573	Betsey	Horses, cattle, hogs, &c.	1,270 50
574	Coffee Pot	Do.	2,166 60
575	Jim Wagon	Do.	3,204 50
576	Jim Bull	Do.	1,142 00
577	Coffee Pot (guardian of Delaware Jack).	Do.	3,073 30
578	Jack Harris	Do.	2,736 75
579	Young Spybuck	Do.	3,143 00
	Carried forward		$304,340 92
	9 Brought forward		$304,340 92
580	Skye	Horses, cattle, hogs, &c.	3,382 75
581	Thomas Williams	Do.	3,537 00
582	Jim Bob	Do.	1,908 50
583	Strong Man	Do.	2,444 35
584	Jack Hunter	Do.	2,700 25

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
585	Long Horn	Do.	$3,025 80
586	Red Blanket	Do.	512 25
587	Joe Harris (guardian of the heirs of Rettick).	Do.	1,844 25
588	Joe Harris	Do.	1,315 00
589	Possum	Do.	4,738 25
590	John Clark	Do.	1,445 70
591	Cabbage	Do.	1,218 40
592	Jim Cabbage	Do.	2,425 75
593	Beaver Jack's wife	Do.	3,483 00
594	Nancy Cabbage (guardian of James Walshe).	Do.	4,632 75
595	Mr. Clark	Do.	1,772 60
596	Caddo	Do.	503 00
597	Co-ta-pe a-se	Do.	1,151 75
598	Larter Harjo	Do.	1,564 50
599	Raccoon	Do.	1,216 85
600	Palmer	Do.	1,226 00
601	Cheleskee	Do.	3,072 00
602	Little Wilson	Do.	2,475 00
603	Nancy Poneaker	Do.	1,130 75
604	Sally Jim	Do.	1,642 50
605	John Cherokee	Do.	1,160 50
606	Pecan	Do.	2,071 00
607	Walshe John	Do.	4,502 00
608	Nancy Smith	Do.	763 65
609	Cherokee	Do.	4,715 50
610	Nancy Blackfoot	Do.	1,425 20
611	Eliza Pecans	Do.	1,283 00
612	Susey Woaco, Joe's widow	Do.	1,308 00
613	Nancy Joe	Do.	1,572 75
614	Jackson Clark	Do.	1,028 25
615	Young Squire Sam (guardian).	Do.	798 25
616	Cabbage (Muskogee, guardian).	Do.	1,025 75
	Carried forward		$371,461 72
	10 Brought forward		$371,461 72
617	Jimmy Ellis	Farming tools, furniture, horses, &c.	5,205 50
618	Sally Fox	Horses, cattle, hogs, &c	1,372 25
619	Shawneego	Do.	2,045 00
620	Susey Ellis	Do.	7,144 00
621	Big Jim (guardian of Jim Fly).	Do.	1,412 50
622	Sam Charley	Do.	4,953 50
623	Kitty Charley	Do.	3,858 75
624	Shawnee Jim	Do.	2,268 00
625	Sampson	Do.	4,529 50
626	Big Jim	Do.	2,692 50
627	Squirrel	Do.	1,531 00
628	Mary Gibson	Do.	1,750 00
629	Samuel Dirt	Do.	5,044 12
630	Young Selack	Do.	5,043 50
631	Jinney Beaver	Do.	1,428 50
632	Kes-se-ka	Do.	751 00

Schedule B—Continued.

No. of claim.	Name of claimant.	Kind of property taken.	Value of property taken.
633	John Taylor	Horses, cattle, farming tools, &c.	$514 50
634	Beaver Jack	Horses, hogs, house, corn, &c.	573 50
635	Mary Pecan	Horses, cattle, hogs, bacon, &c.	1,927 50
636	William Charley	Do.	2,872 00
637	Long Gibson	Do.	2,209 25
638	Jinnie Lighthorse	Do.	2,662 00
639	Fire Gibson	Do.	2,378 00
640	Betey Mahardee	Do.	1,550 75
641	Nancy Hood	Do.	8,322 60
642	Marhardee	Do.	3,285 50
643	Joe Ellis	Do.	7,149 00
644	Warrior	Horses, cattle, farming tools, &c	1,157 50
645	Nancy Long Jim	Horses, cattle, hogs, &c	2,818 00
646	Jack Ellis Milly	Do.	2,599 50
647	Jack Ellis	Do.	3,510 75
648	Dick	Do.	2,564 50
649	Sally White	Do.	3,707 00
650	John Foreman	Do.	1,594 50
651	William Selack	Do.	1,805 25
652	Jim Warrior	Do.	873 00
653	Bety Ax	Do.	455 00
654	Josiah	Do.	3,494 50
655	John Ketchum	Do.	3,453 00
	Carried forward		$483,768 44
	11 Brought forward		$483,768 44
656	Doctor George	Horses, cattle, hogs, &c.	2,697 50
657	Tom Ellis	Do.	2,829 50
658	Nancy Johnson	Do.	6,399 25
659	Le quar-passie	Mules, horses, cooking utensils, &c.	912 75
660	Julia Pecan	Horses, cattle, hogs, &c	1,188 25
661	John Fox	Do.	2,206 25
662	Old Bear	Horses, stock, hogs, &c.	405 00
663	Little Bear	Horses, cattle, hogs, corn, &c.	1,608 75
664	Tom Hood	Do.	1,316 75
665	Jim Washington	Do.	4,919 25
666	Fox	Do.	4,465 50
667	Wild Cat	Do.	3,270 50
668	Billy Taylor	Do.	698 90
669	Black Snake	Do.	1,364 75
670	Bull Frog	Do.	2,317 00
671	Doctor Robison	Do.	890 00
672	John Chickasaw	Do.	1,741 30
673	Jinney Wilson	Do.	2,308 00
674	Shawnee Betsey	Do.	2,259 50
675	Ounah-quash-see	Horses, outhouses, cattle, &c	1,192 50
676	George Fish	House, corn, horses, &c	634 00
677	Short Betsey	Horses, ponies, cattle, &c.	1,555 50
	No. of claims, 322;	aggregate amount	$530,945 14

That all of the said claims arise out of treaty relations with the United States and as rights growing out of such treaties, to wit, articles 11 and 14 of the treaty of May 10th, 1854, and acts of Congress, to wit, sections 2154 and 2155, Revised Statutes; that the said described property was taken from the said Shawnee Indians and the depredations committed against them and their property aforesaid by white men and citizens and soldiers of the United States since and after the time the said Shawnee Indians made and
12 entered into the treaty with the United States of May 10th, 1854, and while the said Shawnee Indians were located and permanently residing and living peaceably on their own lands in the said State of Kansas and the Indian Territory, to wit, in the years 1861 up to and including the year 1866, and that at the time and all the time the said Shawnee Indians were so living and residing in amity and peace with the citizens of the United States, the citizens of the several and surrounding States, and with all the Indians and Indian tribes, and that the said Shawnee Indians owned and possessed their lands in the said State and Territory under the provisions and stipulations of treaties made and entered into with the United States in the month of November, 1825, the month of August, 1831, and May, 1854, in the said State and Territory, and that they possessed and occupied said lands as their homesteads and farms, and that the said Shawnee tribe of Indians and the said Shawnee claimants herein at all times before and since the time of making and entering into said treaties have done, performed, rendered, and kept all the covenants, obligations, promises, agreements, and duties as is stipulated and provided in all of the articles of the aforesaid treaties and in all of the treaties made by and between the United States and the said Shawnee tribe, and that they have at all times abstained from the commission of depredations and complied with the laws in such cases made and provided.

3. Petitioner again states that the said Shawnee tribe of Indians and the above-named Shawnee claimants all have been always loyal and true to their allegiance to the United States Government; that in the late rebellion the said Shawnees were all loyal and true to the Union cause and a large number enlisted and served in the military service of the United States and served during the war, and that the said State of Kansas was a loyal State and never went out of the Union during the time of the late rebellion, and that
13 the said Shawnee Indians, claimants herein, nor the Shawnee tribe or nation of Indians have never sought private revenge nor have they or any of them attempted to obtain satisfaction by any force or violence on account of the taking and despoiling them, the said Shawnees, of their said property, and that no part of the said property has ever been returned to the said claimants, either or any of them, nor have they received payment for the said property.

4. Petitioner again states that the amounts of money claimed by the said Shawnees for the losses and destruction of their aforesaid property sustained and suffered by them, the said Shawnees, at the aforesaid times and places, are specified and set opposite each of the said Shawnees' names, as appears in the above descriptive list and

schedule, for which said several and divers amounts this petitioner prays judgment of this honorable court upon the facts and the law, and that the court will decree and adjudge ten per centum of the aggregate amount of the said claims to be paid to Denver & Brownell, their heirs or successors, for the payment of and compensation to them for their attorneys' fees in this case, and an additional amount to repay and reimburse them or either of them for money which they or either of them may pay and lay out in the preparation, presentation, and prosecution of the said claims in this court or to any other court which the said claims may be appealed to or referred to, in compliance with the acts of Congress referring these claims to the Court of Claims, and for such other and further relief as shall appear to the court right and just to the said Shawnee Indians; and this petitioner will ever pray.

JOHNSON BLACKFEATHER,
By CHARLES BROWNELL,
His Attorney-in-fact.

DENVER & BROWNELL,
Attorneys for the Petitioner and the Claimants.

14 UNITED STATES OF AMERICA, }
Washington, District of Columbia, } ss:

Charles Brownell, first sworn, on his oath states that he is the attorney-in-fact for the petitioner, Johnson Blackfeather, and the Shawnee claimants herein described in the above petition; that he has read the above and foregoing petition and knows the contents thereof, and that the same are true of his own knowledge and belief except as to the allegations as are stated on information and belief, and as to those he believes them to be true.

CHARLES BROWNELL.

Subscribed and sworn to before me this 1st day of August, 1892.

[SEAL.] JOHN T. MITCHELL,
Notary Public.

15 (1–482.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *August* 2, 1892.

I, George Chandler, acting Secretary of the Interior, hereby certify that the papers hereto attached are true copies of the originals now on file and of record in this department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year first above written.

[SEAL.] GEO. CHANDLER,
Acting Secretary.

EXHIBIT D.

(Copy.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 23, 1867.

SIR: I have the honor to transmit herewith for your consideration sundry papers relative to the claims of Shawnee Indians, of Kansas, for indemnity for losses sustained by them during and since the late rebellion. These papers comprise copies of the letter of Agent Abbott transmitting them to this office and of a communication by the Shawnee council upon the subject, besides the original report of Agent Abbott, before whom the testimony was taken, and the affidavits to establish the claims.

The council base these claims upon the right of the Indians to protection from the Government of the United States while themselves observing their treaty stipulations, and reference is made for precedent to previous acts of Congress recognizing that right, particularly to article 11 of the Shawnee treaty of 1854, by which the sum of $27,000 was provided to be paid for losses of the Shawnees by immigrants passing through their country, and to chapter XL of the Laws of 1860 (vol. XII, Stat. at L., p. 15), by which the
16 Government appropriated $36,711 for the payment of losses of these Indians during the then recent troubles of Kansas. The list of claims now presented, as stated in Agent Abbott's report, amounts to $106,928.75, but on examination of the papers errors are found to exist, a correction of which makes the proper footing $109,746.25.

The evidence presented in order to establish these claims is not, certainly, such as in most cases would be deemed sufficient in the case of claims by white citizens against the Government, but on comparison of these papers with the evidence on file in the matter of payment of some $37,000 under the law of 1860, above cited, it is apparent that the same class and character of affidavits as are *now* presented were *then* deemed sufficient to warrant payment, and perhaps the evidence, under the circumstances, is as good as the nature of the case admits.

Agent Abbott, in his report herewith, comments at length upon the nature and character of the evidence, and your special attention is invited to his remarks and explanations upon that subject. The course taken in 1860, when the Shawnee claims came under consideration by this office, was to refer the matter to the department, with the recommendation that Congress be requested to place an appropriation at the disposal of the department sufficient to pay the claims, so much of the amount to be paid to the claimants as shall be found on further examination to be rightfully due. The same course is now recommended and for the following reasons, to wit:

1st. The Shawnees, as a friendly tribe, strictly regarding their treaty stipulations with the Government and abstaining from acts

of private revenge or retaliation, but relying upon the good faith of the Government, are entitled to its protection under the 14th article of the treaty of 1854 and to remuneration for losses sustained at the hands of its citizens.

2d. It is apparent from an examination of the evidence that the Government had the use for its troops of a large amount of the property taken.

3d. There is an abundant *prima facie* case established to justify the department in asking Congress for an appropriation of a sufficient amount to meet the claims, and then the department can then proceed to take such additional evidence as may be deemed
17 necessary to enable it to do substantial justice in the premises.

Very respectfully, your obedient servant,

(Signed) LEWIS V. BOGY,
Commissioner.

Hon. O. H. Browning, Secretary of the Interior.

(Copy.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 30, 1867.

Hon. Thad's Stevens, chairman Committee on Appropriations, House of Representatives.

SIR: I have the honor to transmit herewith a copy of a communication, dated the 23d instant, from the Commissioner of Indian Affairs and accompanying papers submitted by him to this department in relation to claims of Shawnee Indians of Kansas for indemnity for losses sustained by them during and subsequent to the late rebellion, and who rely upon the stipulations of the 14th article of their treaty with the United States of 10th May, 1854, "to have their rights vindicated." These papers comprise copies of the letter of Agent Abbott and of a communication by the Shawnee council upon the subject.

The claims presented to the department amount to $109,746.25, and in view of the facts set forth in the papers now enclosed the subject is commended to the favorable consideration of your committee.

The report of Agent Abbott, a list of the Shawnee claims, and the evidence sustaining the same are also herewith submitted.

Very respectfully, your obedient servant,

(Signed) O. H. BROWNING, *Secretary.*

Order.

It is hereby ordered, that the petition be so amended as to strike out all references to treaties and acts of Congress.

March 13, 1902.

BY THE COURT.

18 II.—*Demurrer. Filed December* 28, 1900.

JOHNSON BLACKFEATHER, Principal Chief, &c.,
v.
THE UNITED STATES. } No. 17210.

And now come the said defendants, by their Attorney General, and demurring to the amended petition in this cause, state as the ground thereof that the said amended petition does not allege facts sufficient to constitute a cause of action.

L. A. PRADT,
Assistant Attorney General.

19 III.—*Opinion of the Court. Filed February* 17, 1902.

Demurrer.

WELDON, J., delivered the opinion of the court:

On the 3d day of August, 1892, the claimant filed a petition in which it is alleged that the petitioner, Johnson Blackfeather, brings suit as the principal chief of the Shawnee tribe or nation of Indians under the provisions of an act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," approved October 1, 1890, and make said act an exhibit and part of his petition.

It is further alleged as a basis upon which the suit is brought that to said act there is a certain amendatory act entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and freedmen, and for other purposes," approved July 6, 1892, which act is also made an exhibit.

It is further alleged that under and by virtue of the provisions of said acts there is a liability against the United States for depredations committed by white citizens of the United States in the State of Kansas and the Indian Territory upon the property of said Indians at divers times and places in the year 1861 and up to and including the year 1866, amounting in the aggregate as damages to the sum of $109,746.25, as ascertained by the Secretary of the Interior in January, 1867, shown in Exhibit D. An exhibit is then made of the different amounts claimed by other individuals represented by the petitioner, amounting to the sum of $530,945.14, as shown in Exhibit B, made part of the petition.

The alleged depredations consist of the taking and destruction of property by the white citizens of the United States belonging to the different Indians represented in the petition, which property consists of horses, mules, clothing, and other and different varieties of personal property.

It is alleged that said claims arise out of treaty obligations with the United States, to wit, articles 11 and 14 of the treaty of May 10,

1854, and the acts of Congress, to wit, sections 2154 and 2155 of Revised Statutes; that the property was taken from said Shawnee Indians, and depredations committed against them and their property, by said white citizens and soldiers of the United States since and after the time said Indians made and entered into said treaty of May 10, 1854, and while the Indians were located and permanently residing and living peaceably on their own lands in the Indian Territory, to wit, in the year 1861, up to and including the year 1866.

It is further alleged that the said Indians have not, either as individuals or as a nation, sought to be revenged, nor have they or any of them attempted to obtain satisfaction on account of the taking of said property.

To the said petition the defendants have filed a demurrer, in which it is alleged as a ground of demurrer that the petition is insufficient, (1) because it appears upon the face thereof that the court has no jurisdiction, and (2) because said petition does not allege facts sufficient to constitute a cause of action in this regard.

The eleventh section of the treaty of 1854, upon which is predicated the claim of the petitioner, is in substance that, it being represented that many of the Shawnees have sustained damage and loss by reason of emigration passing through their country and because of other causes, in violation of the guaranties made for their protection by the United States, it is agreed that there shall be paid as consideration to the Shawnees the sum of $27,000, to be taken and considered in full satisfaction of such claims and all others of whatever kind, and release all demands and stipulations arising under former treaties, except the perpetual annuities; and all Shawnees who have sustained damage by said causes shall, within six months after the ratification of the treaty, file claims for such damages with the Shawnee agent, to be submitted by him; and the amount in each case approved shall be paid by such agent, provided the whole amount of the claims thus approved shall not exceed the said sum stipulated; and provided further that if such amount shall exceed the sum, then a reduction shall be made *pro rata* from each claim until the aggregate is lowered to that amount.

Article 14 of the same treaty provides, in substance, that the Indians acknowledge their dependence on the Government of the United States, and invoke its protection and care; that they will abstain from the commission of depredations, and comply, as far as they are able, with the laws in such cases made and provided, as they will expect to be protected and to have their rights vindicated.

It is insisted by the defendants that the court has no jurisdiction, unless it be by virtue of the acts of 1890 and 1892, because the claims arose between 1861 and 1866, and are long since barred by the statute of limitations.

It will be seen by the allegations of the petition that the action is not brought to recover a sum due the Shawnee tribe, but as a proceeding to enforce an obligation against the Government for the payment of personal losses of individual Indians.

The aggregate amount claimed in Schedule B of losses embraced

in the petition is the sum of $530,945.14, and it is alleged with reference to such claims that they arise out of treaty relations with the United States, and as rights growing out of such treaties, to wit, articles 11 and 14 of the treaty of May 10, 1854, and the act of Congress, to wit, sections 2154 and 2155, Revised Statutes, and that the property so described was taken from the Shawnee Indians
21 individually, and the depredations committed against them by white citizens and soldiers of the United States since the making of the treaty of May 10, 1854.

The claim of the petitioner, according to the allegations of the petition, is founded upon the liability assumed by the defendant in the eleventh and fourteenth sections of the treaty of 1854, and the right of action, which is by the petition prosecuted, is founded upon the two acts of Congress aforesaid, to wit, that of 1890 and that of 1892.

A very able argument was made by counsel for the claimant to maintain the right of each individual Indian, under the acts aforesaid, to prosecute his individual right in and through the medium of the plaintiff in this cause, who is the principal chief of the Shawnee Indians. Confining the discussion to the right to bring suit in the form of the petition, it is not pretended that the Indians in their tribal or aggregate capacity as an entity were damaged by the alleged depredations of the persons stated in the petition. That being true, one of the questions presented for the determination of the court is as to whether a petition framed upon the theory of the individual right of the Indian can be maintained under the provisions of those statutes.

The act of 1892, seems to have been enacted for the purpose of enlarging the scope of the right given under the act of 1890. But is it sufficiently broad to embrace the individual right of each Indian who may have suffered a depredation at the hands of the persons alleged?

The statute is entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," and provides, in substance, that they shall present to the said court all their claims against the United States and the Cherokee nation, or against either or both of them, of any description whatsoever arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, express or implied, under such treaties made and entered into by and between the said Shawnees and Cherokees, and between them, or either of them, and the United States.

The right to sue, by the phraseology of this statute, is in the assertion of rights growing out of treaties, and for contracts, express or implied, under treaties made and entered into by and between the said Shawnees, Cherokees, and the United States. Can it be said that there has been a treaty, a contract, express or implied, between the United States and the individual Indians, who, through the medium of the principal chief, are now prosecuting these claims?

The attention of the court is called to the fourteenth section, which provides that "the Shawnees acknowledge their dependence on the Government of the United States, and invoke its protection and care. That they will abstain from the commission of depredations and com-

ply, as far as they are able, with the laws in such cases made and approved, as they will expect to be protected and have their rights vindicated." Does this phraseology establish contractual or treaty relations, having the effect of contracts, with each individual Indian composing the Shawnee tribe? Or, rather, is it not a general clause, limited in its effect to the parties to the treaty, to wit, the United States on one side and the Shawnee tribe upon the other?

The plaintiff, by the allegations of the petition, has asserted an individual obligation existing between the United States and each of the claimants, and in order to recover it must appear that such a relation exists.

22 The United States, as the guardian of the Indians, deal with the nation, tribe, or band, and have never, so far as is known to the court, entered into contracts, either express or implied, compacts or treaties with individual Indians so as to embrace within the purview of such contract or undertaking the personal rights of individual Indians.

The acts of Congress referred to by the allegations of the petition and the argument of counsel for the claimant, are not applicable to the claim made by this petition. The condition upon which remuneration to the Indian is to be made under section 2154, Revised Statutes, is not shown to exist in this case. And so it may be said of section 2155 of Revised Statutes, that the condition upon which the Indian is entitled to remuneration out of the Treasury is not shown to exist in the claims made in this proceeding.

The act of 1892 specifies that the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October 1, 1890, shall present to said court all their claims against the United States. The claims referred to this court under the act of 1890, were the claims of the Shawnee tribe or band of Indians, and not the personal claims of the individual Indians belonging to said tribe or band of Shawnees.

The evident object of the act of 1892, was to enlarge the jurisdiction of this court with reference to the same class of claims as were cognizable under the act of 1890, to wit, the claims of the Shawnee tribe or band of Indians.

It is insisted by defendants' counsel that the statute of limitations bars the right of proceeding. In the view which the court has taken of this case it is not necessary to pass upon that question. The act of 1892 was before the Supreme Court of the United States in the case of *United States v. Blackfeather* (155 U. S., 180), and in that case the Supreme Court said in substance that it was by no means certain that, under the acts of 1890 and 1892, the Shawnees were authorized to recover and collect from the Government any other moneys than those which were claimed in their tribal relation. The money in question was not due the tribe as such, but to certain individual orphans, who claimed to have been defrauded.

It may have been unnecessary for the Supreme Court, in the decision of the question involved in that proceeding, to pass upon the

individual right of the Indian, but the court, in dealing with the question involved in that proceeding, has expressed an opinion indicating the proper construction of the act of 1892, with reference to the rights of the United States and the Indians.

But, waiving all criticism on the form of the proceeding, the fundamental question is, as to whether, under the treaty of 1854, and the Revised Statutes cited by the claimant, any right exists to recover against the United States, founded either upon the treaty or the statutes.

The eleventh article, as has been stated, provides for the payment of a specific amount upon the condition that the claims arising under said section shall, in the aggregate, amount to that specific sum, and that in case such claims do not aggregate that sum, the residue shall be appropriated as the council of the Indians shall direct. That sum has been paid, and this proceeding is not based upon any liability of the United States for the non-payment of any portion of that amount.

In the argument herein it was insisted by claimant's counsel that the fourteenth section, acknowledging the dependence of the Indians and their obligation to abstain from depredation, and the guaranteed protection to the Indians, constitutes a legal basis, upon which the claims can be maintained, assuming that the act of 1892, gave the right of action in this court.

The general guaranty of the Government to protect the Indians, in consideration of their submission to the law, is not sufficient, in the opinion of the court, to constitute the basis of the claim alleged and sought to be maintained by this petition, nor is the right given under the Revised Statutes, and therefore the demurrer is sustained.

23 IV.—*Demurrer Sustained.*

At a Court of Claims held in the city of Washington on the 17th day of February 1902, it was ordered that the demurrer to the amended petition in the above-entitled cause be sustained.

BY THE COURT.

24 V.—*Application for and Allowance of Appeal.*

From the opinion and judgment of the court in the above-entitled cause, rendered February 17, 1902, in favor of the defendants, the claimant by his attorney therein, this 20th day of February 1902, hereby makes application for and gives notice of an appeal to the Supreme Court of the United States.

JOHN- BLACKFEATHER,
Principal Chief of the Shawnee Indians,
By JOHN C. CHANEY,
His Attorney.

Filed February 20, 1902.

Ordered, that this appeal be allowed as prayed for.

BY THE COURT.

February 20, 1902.

25 Court of Claims.

JOHNSON BLACKFEATHER, Principal Chief of the Shawnee Tribe of Indians, for the Use, &c.,
vs.
UNITED STATES.
} No. 17210.

I, John Randolph assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the opinion of the court,—of the judgment of the court sustaining the demurrer, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 15th day of March A. D. 1902.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18,455. Court of Claims. Term No. 276. Johnson Blackfeather, the principal chief of the Shawnee tribe of Indians, for the use & benefit of the Shawnee Indians, appellant, *vs.* The United States. Filed March 19", 1902.

FILE COPY

Supreme Court, U. S.
FILED
MAR 10 1903
JAMES H. MCKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OF THE SHAWNEE TRIBE OF INDIANS FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, APPELLANT,

vs.

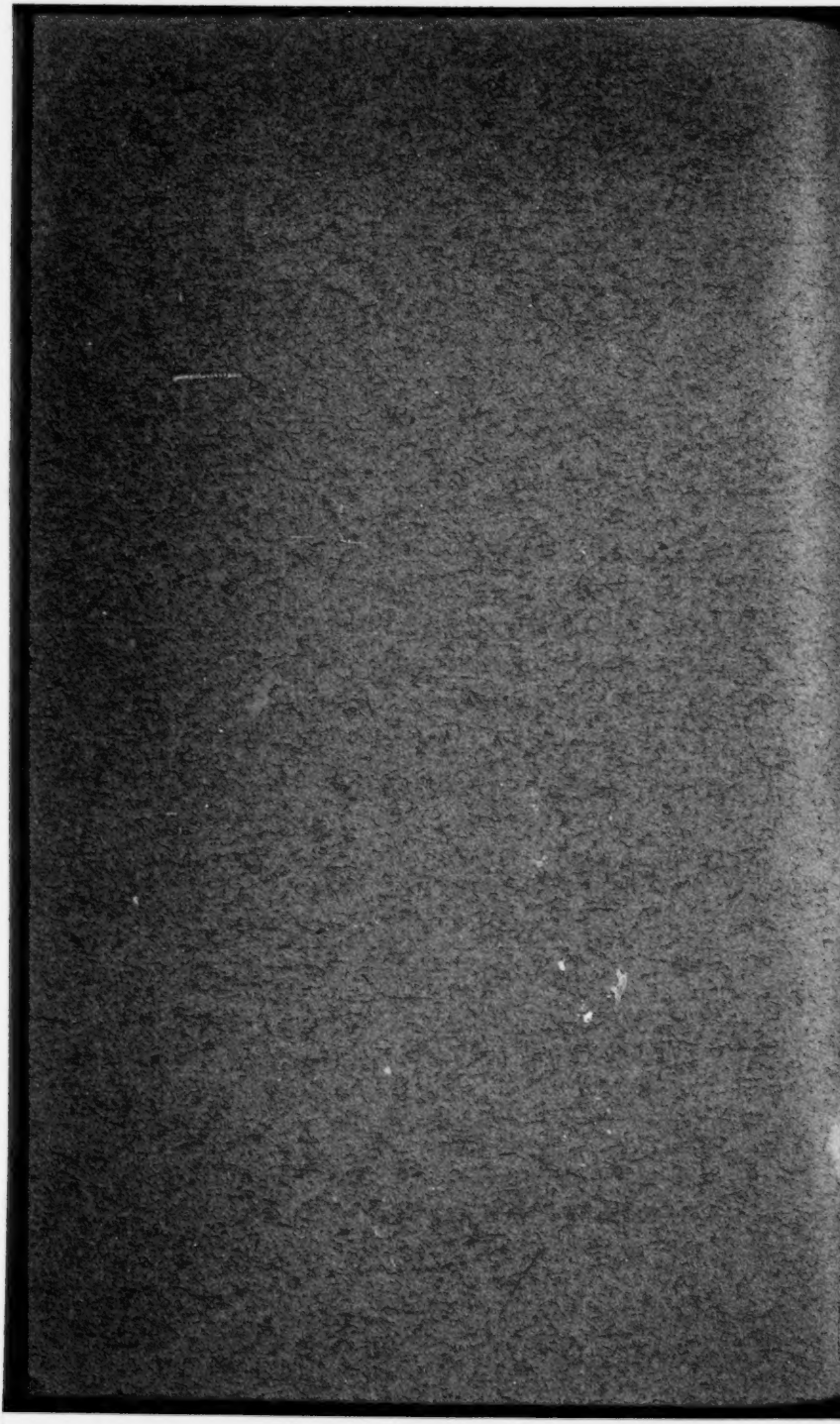
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLANT.

JOHN C. CHANEY,
ALPHONSO HART,
Attorneys for Appellant.

GIBSON BROS. PRINTERS, 707 G ST., N. W. WASHINGTON, D. C.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OE THE SHAWNEE TRIBE OF INDIANS, FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, *Appellant.*

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLANT.

Statement of the Case.

Johnson Blackfeather, an Indian by blood and descent, is the principal chief of the Shawnee tribe of Indians, and resides at or near Vinita, Delaware district, Cherokee Nation, in the Indian Territory. On the 28th day of December, 1891, he filed his original petition in the Court of Claims, and on the 3rd day of August, 1892, he filed in lieu of said original petition, his amended petition. The

amended petition (Record, p. 1) states in substance: That the suit is brought in the Court of Claims under the provisions of the act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," approved October 1, 1890, and an act supplementary and amendatory to the aforesaid act, approved July 6, 1892. The petition was filed for the use and benefit of the Shawnee Indians, to recover and collect from the United States Government the several, respective and aggregate amounts of money therein alleged, for the destruction, loss, forcible taking, carrying and driving away live stock, farm products, household goods, money, and other personal property of divers descriptions and kinds belonging to, owned and possessed by, and the property of the said Shawnee Indians, by white and United States citizens and soldiers, in the State of Kansas and the Indian Territory at divers times and places in the year 1861, and all the time up to and including the year 1866. A descriptive list or schedule, setting out the names of the Shawnee Indians whose property was taken and despoiled, and the amounts of money claimed as the price and valuation of said property so taken is appended to said amended petition. A portion of said claim was ascertained and determined by the Secretary of the Interior in the month of January, 1867, amounting to $109,746.25. The Secretary of the Interior transmitted the amount so ascertained, to Congress, with the recommendation that it be paid (Record, pp. 11-12).

The petition further represents that the claims sued for arise out of treaty relations with the United States, and as rights growing out of such treaties, to wit, articles 11 and 14 of the Treaty of May 10, 1854, and the acts of Congress, to wit, sections 2154 and 2155 of Revised Statutes.

It alleges that the property described and referred to was taken from the Shawnee Indians, and the depredations committed against their property by white men, citizens and soldiers of the United States, subsequent to the time when said Indians entered into the Treaty of May 10, 1854, and while said Indians were located and permanently residing and living peaceably on their own lands in the State of Kansas and the Indian Territory, and that they were residing in amity and peace with the cititizens of the United States and of the surrounding States, and with all the Indians and Indian tribes; that said Indians owned and possessed their lands in said State and Territory under the provisions and stipulations of treaties entered into with the United States in the months of November, 1825, August 1831, and May, 1854; that they occupied and possessed their lands as their homesteads and their farms; and that they at all times since the making and entering into said treaties, have done, performed, rendered and kept all the covenants, obligations, promises, agreements and duties stipulated and provided in all of the articles of the aforesaid treaties, and in all of the treaties made by and between the Shawnee tribe and the United States; and that they have at all times abstained from the commission of depredations, and have complied with the laws in such cases made and provided; that they have been loyal and true to the United States Government; that during the late rebellion the said Shawnees were loyal to the Union cause and a large number enlisted and served in the military service of the United States; and that the said Shawnee Indians have never sought private revenge, nor attempted to obtain satisfaction by any force or violence, on account of the taking and despoiling them of their property. And the petition further asserts that no part of said prop-

erty has ever been returned to the said claimants, nor have they ever received payment in money. Judgment is prayed for the amount of the aforementioned claims and for relief.

To this amended petition the Government filed a demurrer upon the grounds that it does not state facts sufficient to constitute a cause of action. This demurrer was sustained by the court and judgment rendered against the petitioner. From that judgment an appeal was taken and allowed to the Supreme Court of the United States.

Assignment of Errors.

1st. The Court of Claims erred in sustaining the demurrer filed by the United States.

2nd. The Court of Claims erred in holding that the amended petition does not allege facts sufficient to constitute a cause of action.

3rd. The Court of Claims erred in deciding and holding that the petitioner was not entitled to relief under the law and under the provisions of the treaty of May 10, 1854, and other treaties made with the Shawnee Indians.

4th. The Court of Claims erred in finding and holding that the claimant was not entitled to sue under the statutes passed and approved October 1, 1890, and the supplementary act, approved July 6, 1892.

5th. For other errors appearing in the record of the case.

ARGUMENT.

I.

The Court has Jurisdiction.

Upon the hearing in the court below two points were made by the learned Atterney-General in support of the

demurrer which he filed. (1) That the Court of Claims has no jurisdiction to try the case, and particularly that it had no right to maintain an action brought by the principal chief of the tribe, for the use and benefit of the individual members of the tribe. (2) That the petition does not state facts sufficient to constitute a cause of action or entitle the claimant to any relief.

Jurisdiction.

1st. As to the question of jurisdiction, the claims sued for consist of losses and injuries sustained by the individual members of the Shawnee tribe, and particularly property appropriated for the use of the Army. A schedule of these losses is annexed to the petition, and it seems to be claimed by the Attorney-General that for this kind of losses and damages Congress has not afforded any relief, and that the damages contemplated by the statute are only such as are sustained by the tribe in their tribal capacity. We submit that a fair construction of the statute of October 1, 1890, and the supplementary act of July 6, 1892, clearly authorizes the court to consider and adjudicate the class of claims which are presented in this petition. The act of October 1, 1890 is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen

of the treaty of July nineteenth, eighteen hundred and sixty-six, made by and between the United States and the Cherokee Nation, and articles of agreement made by and between the Cherokee Nation and the Shawnee Indians, June seventh, eighteen hundred and sixty-nine, approved by the President, June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians, April eighth, eighteen hundred and sixty-seven; and also of the Cherokee freedmen, who are settled and located in the Cherokee Nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six in respect to the subject-mater herein provided for.

SEC. 2. That the said Shawnees, Delawares, and freedmen shall have a right, either separately or jointly, to begin and prosecute a suit or suits against the Cherokee Nation and the United States Government to recover from the Cherokee Nation all moneys due, either in law or equity, and unpaid to the said Shawnees, Delawares, or freedmen, which the Cherokee Nation have before paid out, or may hereafter pay, per capita, in the Cherokee Nation, and which was, or may be, refused to or neglected to be paid to the said Shawnees, Delawares, or freedmen by the Cherokee Nation out of any money or funds which have or may be paid into the treasury of, or in any way have come, or may come, into the possession of the Cherokee Nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of ninety-six degrees west longitude, and which have been, or may be, appropriated and directed to be paid out per capita by the acts passed by the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said Shawnees, Delawares, or freedmen under the provisions of the aforesaid articles of the treaty and articles of agreement.

SEC. 3. That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen, and in their behalf and for their use in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of such Indians be impaired by any acts passed and approved by the Cherokee national council. Suits may be instituted within twelve months after the passage of this act, and the law and practice and rules of procedure in such courts shall be the practice and law in these cases; and copies of the petitions filed in the case at the commencement of the suit shall be served upon the Attorney-General of the United States and on the principal chief of the Cherokee Nation by the marshal of the district court for the Indian Territory; and that the costs of the said suits shall be apportioned between the United States and the other parties to such suits as to said court law and equity shall require. The Attorney-General shall designate and appoint from the Department of Justice a person who is competent to defend the said Cherokee Nation and the United States. And the said Shawnees, Delawares, and freedmen may be represented by attorneys and counsel. And the court is hereby authorized to decree the amount of compensation of such attorneys and counsel fees, not to exceed ten per centum of the amount recovered, and order the same to be paid to the attorneys and counsel of the said Shawnees, Delawares, and freedmen; and all judgments for any sum or sums of money which may be ordered or decreed by such court in favor of the Shawnees, Delawares, or freedmen, and against the Cherokee Nation, shall be enforced by the said court or courts against the said Cherokee

Nation by execution, mandamus, or in any other way which the said court may see fit.

SEC. 4. That the said Shawnee Indians are hereby authorized and empowered to bring and begin a suit in law or equity against the United States Government in the Court of Claims, to recover and collect from the United States Government any amount of money that in law or equity is due from the United States to said tribes in reimbursement of their tribal fund for money wrongfully diverted therefrom. The right to appeal, jurisdiction of the court, process, procedure, and proceedings in the suit here provided for shall be as provided for in sections one, two, and three of this act.

Approved October 1, 1890.

The following is the supplementary act of July 6, 1892:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October first, eighteen hundred and ninety, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," shall present to the said court all their claims against the United States and the Cherokee Nation, or against either or both of them, of every description whatsoever, arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts expressed or implied, under such treaties, made and entered into by and between the said Shawnees and Cherokees, and between them, or either of them, and the United States.

Approved July 6, 1892.

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As will be seen, the first section of the act of 1890 declares that the jurisdiction is conferred upon the Court of Claims, "to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians who are settled and incorporated in the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude," etc. This provision speaks, not of the Shawnee and Delaware tribes, but of the Shawnee and Delaware Indians, clearly meaning, that it refers to Indians who belong to the Shawnee and Delaware tribes, and who live in the territory named. And it extends to any member of either of those tribes the right to bring suit to recover for such damages or injuries as he may have sustained. Under this provision, so far as the method of bringing suit is concerned, it clearly refers to the Indians themselves, and gives to any member of the tribe the right to bring an action.

Section 2 of the act provides: "That the said Shawnees, Delawares and freedmen shall have a right to begin and prosecute a suit or suits, *either separately or jointly.*"

Section 3 provides: "That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen, and in their behalf and for their use in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the right of such Indians be impaired by any acts passed and approved by the Cherokee national council."

The 4th section of the act provides: "That the said Shawnee Indians are hereby authorized and empowered to begin and bring a suit in law or equity against the United States Government in the Court of Claims," etc.

Taking all these provisions together, and giving them a fair and intelligent construction, it must appear to the court that the law was enacted for the benefit of the Indians belonging to these tribes, and that their individual rights and interests were to be considered by the court; and it must very clearly appear that they had the privilege of bringing suits in their individual names, or, they might bring suits by a trustee acting or speaking for them. That this was the evident purpose of Congress is clearly shown, not only by the letter of the statute itself, but by concurrent history. The greatest wrong sustained by those who belonged to the Shawnee and Delaware tribes did not consist in those injuries which bore against the tribes themselves as tribes, but in those which were borne and suffered by individual members—in the loss and destruction of property, the despoiling of farms and plantations, the taking of cattle, and provisions. These wrongs were perpetrated against individuals and not against the tribes as such. Congress would be doing a vain thing in providing by statute for the bringing of suits which related alone to injuries sustained by a tribe, leaving out the substantial damages which were sustained by individual members of the tribe.

If it is contended, however, that the act of October 1, 1890, referred particularly to the claims of these two tribes as such, or, to the treaties of July 19, 1866, and June 7, 1869, and articles of agreement of April 8, 1867 (which we do not admit), certainly the supplementary act of July 6, 1892, removes all possible doubt as to the character and kind of claimants who were to be permitted to sue, as well as to the character and kind of claims which were authorized to be prosecuted in the Court of Claims. For this act declares that these people "shall present to the said court *all their* claims against the United States,

and the Cherokee Nation, or against either or both of them, of *every description whatsoever*, arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, *express or implied*, under such treaties made and entered into by and between these said Shawnees and Cherokees, and between them or either of them and the United States." This last provision of the act of 1892, is intended to cover every sort of claim, whether in behalf of the tribe or in behalf of individual members of the tribe. The language could not have been made broader or more comprehensive, and the evident intention of Congress was that *all* claims, tribal or individual, of whatever name or nature, should be considered and adjusted by the Court of Claims.

It would be absurd for Congress to enact a law authorizing the adjustment of claims, but confining it to such narrow limits, as to exclude from consideration the great body of injuries sustained by individual members of the tribe. It would be "the play of Hamlet, with Hamlet left out." It was intended that the whole business should be settled; everything arising out of treaty relations, and every contract, express or implied, growing out of treaties, or treaty relations, was to be brought within the jurisdiction of the court. If the Shawnee Indians had failed to present to the court, by the way of petition or otherwise, their claims, as individual sufferers, within the period of time named in the statute, they would have been absolutely barred from all relief.

The only practical question therefor, is not as to the right to bring suit, but as to the manner of bringing suits under the acts of 1890 and 1892. That is to say, whether these suits should be brought in the name of the individual Indians who had sustained injury, or in the name of some party speaking for and representing them.

Upon this subject, it seems to us, there can be no doubt as to the propriety of bringing suit in the name of their trustee. The acts of Congress expressly say that the suits may be brought by a trustee, or jointly or severally. It is a practice approved by all the courts, that where there are a large number of persons entitled to relief, one may bring suit for himself and the others. In the present instance, if the contention of the Government is correct, there would need to be over 600 suits instead of one. As far as the question of the jurisdiction of the court is concerned, the right of these Indians to appear in the manner in which they have, and be represented by Johnson Blackfeather, their chief, as their trustee and agent, is well established. It saves a multiplicity of suits, and is in harmony with the spirit of the law and the practice of courts in such cases.

II.

Liability of Government Under Treaty.

The other question, and by far the most important one in the case, is as to the right of these Shawnee Indians to recover for the damages sustained by them under the law as it exists and the treaties which have been made between the Indians and the Government. The subject is a broad one. A judgment is sought to be recovered under the provisions of the Treaty of May 10, 1854, and under the law existing as applicable to such treaty.

What, therefor, is the true construction of this instrument? It should be remarked that the relations of the Government to the Indian tribes is a different relation from any that exists towards any other class of people in the United States. From the beginning, and ever since

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the adoption of the present Constitution, the Indians have been regarded, to a certain extent, as the wards of the nation. The Government has, by slow, and at times almost imperceptible approaches, gradually succeeded in getting possession of the Indian lands. This has been done through the agency of treaties made between the parties; and two ideas have been prominent in the history of all legislation on the subject of the Indians or the Indian tribes. They are, first, that the Indians are under the especial care and protection of the United States, and second, that in consideration of this protection they are to yield loyal obedience to the government; they are to obey the laws; they are never to take the law into their own hands, nor attempt to punish those who may perpetrate crimes or wrongs against them. It is a matter of obedience on the part of the Indians, and protection on the part of the government. The Indians shall yield obedience, although no part of the United States, and having no citizenship, and on the other hand, the Government shall, to a certain extent, take charge of their affairs, protect them from wrongs and injuries that might be committed against them, and do whatever is necessary to secure to them the full enjoyment of their rights. It is not in the power of the Government to relieve itself from this obligation of protection which it has assumed.

The Government's Policy in Dealing With the Indians.

For more than a hundred years the United States has been dealing with the Indians and the Indian tribes. It has passed laws regulating their management and their affairs, and it has also entered into treaties with them, from

time to time. The general effect of their treatment by the Government has been to crowd them out of the lands which they originally owned and occupied. This has been done in almost every instance by the United States agreeing to protect and care for them in consideration that they shall convey their lands, or move away therefrom to far distant settlements on the borders of civilization, and in all respects act according to the wishes of the government. In some cases the Government has traded lands with the Indians, and made arrangements to remove them from the places where they lived to new territory, and it has provided in its treaties to pay them annuties, furnish them money for establishing their settlements in the new country, enabling them to establish schools, furnishing them with agricultural implements, and whatever seemed necessary for their occupancy and enjoyment of the territory to which they were sent. In all this business they have been treated as minor children, under the care and guardianship of the Government, and it has been distinctly understood that while they owe allegiance to the Government, and while they are not permitted to avenge any wrongs which they may conceive to have been committed against them, and while they must be peaceable in all things, and refrain from acts of violence, yet in consideration for this surrender of the right to govern and manage their affairs, and settle their own difficulties, and give up their former customs, the Government, upon its part, has agreed to give them absolute protection, and make good to them any losses which they may have sustained by reason of the depredations committed against them or otherwise. One of the matters to which the attention of the Indians and the Government has been called, is that which relates to depredations committed by white people and citizens of the United States upon the lands of the Indians.

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Treaties between the United States and Indians.

This policy of obedience and loyalty upon the part of the Indians to the United States, and protection to the Indians, and the vindication of their rights by the Government, and the payment to them for damages and losses sustained, was inaugurated at a very early day, even before the adoption of the present Constitution.

A treaty was made and concluded between the Shawnee Indians and the United States on the thirty-first day of January, one thousand seven hundred and eighty-six. It related to the delivery up of hostages by the Shawnees to the Government; to the punishment of crimes committed within the territory occupied by the Shawnees; and it allotted lands to the Indians in that part of the United States territory which is now the State of Ohio.

The second article of the treaty is in the following words:

> "Article 2. The Shawnee Nation do acknowledge the United States to be the sole and absolute sovereigns of all the territory ceded to them by a treaty of peace made between them and the King of Great Britain, the fourteenth day of January, one thousand seven hundred and eighty-four."

Article 5 reads as follows:

> "The United States do grant peace to the Shawnee Nation, and do receive them into their friendship and protection."

Thus, at an early day, the doctrine of obedience and loyalty on the one hand, and of protection upon the other hand, was inaugurated as the policy of the Government,

and it has been continued ever since, not only with the Shawnees, but with other tribes occupying the territory of the United States.

The treaty made by the United States with the Great and Little Osages, and which was ratified April 28, 1810, contains the following paragraph:

> "And the United States hereby guarantee to any Indian or Indians of the said nations, respectively, a full indemnification for any horses or other property which may be stolen from them by any of their citizens."

In a treaty made between the United States and the Blackfoot Nation of Indians, which was proclaimed March 17, 1866, article 7 therein reads as follows:

> "Article 7. The aforesaid nations and tribes of Indians agree that citizens of the United States may live in and pass unmolested through the countries, respectively, occupied and claimed by them. And the United States is hereby bound to protect said Indians against depredations and other unlawful acts which white men residing in or passing through their country may commit."

In addition to the foregoing guarantee of protection the same treaty provides in article 9, that twenty thousand dollars, annually, is to be expended by the United States in such useful goods and provisions, as the President, in his discretion, may from time to time determine.

Article 10 provides that they shall be paid fifteen thousand dollars, annually, to be used in establishing and instructing them in agricultural and mechanical pursuits, and in educating their children, and promoting their civilization and christianization.

In a treaty between the United States and the Belantseetea or Minnetare tribe of Indians, proclaimed February 6, 1826, the following provision is contained in article 6.

> "And the United States hereby guarantee to any Indian or Indians of said tribe a full indemnification for any horses or other property which may be stolen from them by any of their citizens: *Provided*, That the property so stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States."

In a treaty proclaimed April 10, 1855, between the United States and the Chasta and other tribes of Indians, article 3, after providing for the payment of certain sums of money and annuities for the period of fifteen years, has the following:

> "The United States also agree to appropriate the additional sum of five thousand dollars, for the payment of the claims of persons whose property has been stolen or destroyed by any of the said united bands of Indians since the first day of January, 1849."

A treaty concluded between the United States and the Cherokee tribe of Indians as far back as November 22, 1785, provides in article 3 that:

> "The said Indians, for themselves and their respective tribes and towns, do acknowledge all the Cherokees to be under the protection of the United States of America, and of no other sovereign whatsoever."

Article 4, of the treaty between the United States and the Snake Indians, is as follows:

"Article 4. In case of any depredation being committed upon the person or property of any member of the aforesaid tribe, it is stipulated that no attempt at revenge, retaliation or reclamation shall be made by said tribe; but the case shall be reported to the agent or superintendent in charge, and the United States guarantee that such depredation shall be punished in the same manner as if committed against white persons, and that the property shall be restored to the owner."

In the treaty with the Seminoles, in 1866, in return for pledges of peace and friendship:

"The United States guarantee them quiet possession of their country and protection against hostilities on the part of other tribes, and, in the event of such hostilities, that the tribe commencing and prosecuting the same shall make just reparation therefor."

In the treaty with the Delawares of July 17, 1854, the following occurs:

"The Delawares acknowledge their dependence on the Government of the United States and invoke its protection and care. They desire to be protected from depredations and injuries of every kind * * * and if, unhappily, any difficulty should arise, they will at all times, as far as they are able, comply with the law in such cases made and provided, as they will expect to be protected and their rights vindicated, when they are injured."

In article 11, of the treaty of 1866, the following appears:

"The Delawares acknowledge their dependence upon the United States, and again renew their pledges of devotion to the Government thereof, and ask its protection; and the United States agree to protect, preserve, and defend them in all their just rights."

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A treaty with the Miamis, in 1839, has the following:

> "And when the said tribe shall have emigrated the United States shall protect the said tribe and the people thereof in their just rights and possessions against the injuries, encroachments, and oppressions of any person or persons, tribe or tribes, whatsoever."

Article 10 of the treaty with the Ottawas contains the following:

> "It is stipulated that the United States shall pay to the said Ottawas the claims for stolen ponies, cattle and timber, already reported and approved by the Secretary of the Interior, amounting to $13,005.95. And also all other claims for damages within two years, or since the taking of testimony for the above-mentioned damages, upon the presentation of sufficient proof."

The foregoing and many other provisions found in the treaties respectively entered into between the United States and Indian tribes, which could be cited, are clearly sufficient to establish what is the recognized policy of the United States in dealing with the Indians.

III.

THE TREATY OF 1854.

It is a Contract of Indemnity Against Loss or Damage.

Coming now to the Treaty with the Shawnee Indians on the 10th of May, 1854, let us inquire what is its true meaning; what did the parties to said treaty intend; and what was understood by them in the making of such treaty? It was a very important treaty, and embraced a variety of subjects. It related to a cession by the Indians

of a large tract of country lying west of the State of Missouri, which had before that time been set apart to the Shawnees; and, on the other hand, it related to the cession by the United States to the Shawnees of a tract of 200,000 acres of land; it related also, to schools, churches, and the improvement of the condition of the Shawnees; it attempted to regulate their affairs, to a large extent, among themselves; it provided for selections of land by individual members of the tribe; also to the taking of a census of the tribe; and it had much to say in regard to the proceeds of the sale of lands, and the survey of the same; it seems to have intended that there should be a substantial settlement between the Government and the tribes of all their affairs, and all the matters growing out of former relations between the Government and the Indians; it related to the payment of installments of money to the individual members of the tribe, and furnished a rule for their guidance in the future.

But the parts with which we are more particularly concerned are found in Articles 11 and 14.

Article eleven reads as follows:

> "Article 11. It being represented that many of the Shawnees have sustained damage and loss and destruction of their crops, stock and other property, and otherwise, by reason of the great emigration which has for several years passed through their country, and of other causes, in violation, as they allege, of guarantees made for their protection by the United States, it is agreed that there shall be paid in consideration thereof, to the Shawnees, the sum of twenty-seven thousand dollars, which shall be taken and considered in full satisfaction not only of such claim but of all others of what kind soever, and in release of all demands and

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stipulations arising under former treaties, with the exception of the perpetual annuities amounting to three thousand dollars, hereinbefore named, and which are set apart and appropriated in the third article hereof. All Shawnees who have sustained damages by the emigration of citizens of the United States, or by other acts of such citizens, shall, within six months after the ratification of this treaty, file their claims for such damages with the Shawnee agent, to be submitted by him to the Shawnee council for their action and decision, and the amount in each case approved shall be paid by the said agent: *Provided*, the whole amount of the claims thus approved shall not exceed the said sum stipulated for in this article: *And provided*, that if such amount shall exceed the sum, then a reduction shall be *pro rata* from each claim until the aggregate is lowered to that amount. If less than that amount be adjudged to be due, the residue, it is agreed, shall be appropriated as the council shall direct."

Thus, article 11 recognizes the fact that the Indians had sustained damages in the loss and destruction of their crops, stock and other property, and otherwise, by reason of great emigration, which had for several years passed through their country, and of other causes in violation, as they allege, of the guarantee made for their protection by the United States. And it was provided, that for the loss and damage which they had sustained, they should be paid the sum of $27,000. Here is a clear recognition of the fact that the United States felt itself under obligation, and was bound to pay for the damages which the Indians had sustained.

Article 11 establishes a precedent, or rather, is a continuation of the precedent, which had been established by the Government in the various cases with their Indian

tribes. The effect of the transaction was: "we, the Indians of the Shawnee tribe, agree to obey and yield allegiance to the United States; we agree to abstain from all violence and all attempts to punish those whom we conceive to have committed wrongs against us; in consideration that the Government shall give us adequate protection; and shall make good all the losses we have sustained."

This, of course, related to all losses sustained by the Indians prior to the date of the execution of the Treaty. If the Treaty had stopped at this point, it might be a matter of doubt whether the claim of the Indians for depredations committed after that date could be maintained except under the general law of implied contracts; but, fortunately, section 14 is brought in, and is, of course, as binding upon the Indians, on the one hand, and the Government on the other, as is section 11.

That section is as follows:

> "Article 14. The Shawnees acknowledge their dependence on the Government of the United States, and invoke its protection and care. They will abstain from the commission of depredations, and comply, as far as they are able, with the laws in such cases made and provided, as they will expect to be protected and to have their rights vindicated."

Section 11 of the Treaty provided for and settled that which had taken place in the past. The payment of the sum of $27,000 for the destruction of crops, stock, and other property, in consequence of the violation of the United States of its guarantee of protection, was the completion and adjustment of all which had preceded such settlement, and was the admission by the Government of

its liability to pay damages under the treaties made with the Indians.

Section 14 above quoted, relates solely to the future, but it is to be interpreted in the light of past transactions. As the United States, under its promise of protection, had acknowledged and satisfied its liability for past damages and injuries to the Indians, so did it agree in Section 14 to continue the same policy of protection and satisfaction. But Section 14 is even stronger in favor of the Indians than the mere promise of protection. It is a substantial agreement upon the part of the Government to satisfy the claims of the Indians for such injuries as might be suffered thereafter, and was undoubtedly so intended by both parties to the Treaty. The section may be divided into two parts or provisions, so far as the Government is concerned :

First, PROTECTION.

Second, VINDICATION.

What is the true and just meaning of these provisions? It has already been shown that the Government, under its promise of protection, felt itself bound to pay to the Indians such sums as would compensate them for the damages sustained. And if this was the only clause in the section it might well be contended that it was broad enough to justify and require a settlement by the United States for the losses suffered by the Shawnees.

"Protection," as defined by Webster, means "the act of protecting; preservation from loss, injury, or annoyance." "To protect" is "to cover, shield from danger or injury."

The 11th section of the treaty of 1854 places the obligation of the Government upon this ground—damages

arising from *a failure to protect*. The language used in the treaty is "in violation, as they allege, of guarantees made for their protection." It was in consideration of this that the United States agreed to pay and did pay the sum of $27,000.

The second clause of the 14th section is, however, broader and stronger than the first. Not only is the Government bound to give protection to the Indians, but it is also bound to vindicate their rights. These rights were a peaceable possession and enjoyment of the lands and territory where they lived. It included all their personal and property rights; it meant protection from invasion by outsiders, whether soldiers of the United States or private citizens of the United States; and if by the conduct of the soldiers or citizens substantial injury was sustained, then that should be made good to the Indians.

As already stated, *vindication* means more than protection. One of Webster's definitions of the verb "vindicate" is "to defend *with success;* to prove to be just or valid; to maintain; to assert; to defend; to justify." The noun "vindication" is defined to be "the act of vindicating; defense; justification," etc.

This is what the United States, by section 14 of the treaty of 1854, agreed to do. And this is undoubtedly what was understood by both parties to the treaty. The Indians were to continue their loyalty and good conduct, and the United States was to continue its protection and vindicate their rights. If they suffered injuries the United States was to make them good. That this was the understanding on the part of the Government is not only to be inferred from the language of the treaty itself, but also from the conduct of the officers of the Government who had this subject in charge.

IV.

THE KIND OF INJURIES SUSTAINED.

The Law Implies a Promise to Pay and the Treaty Guarantees its Performance.

After the execution of the treaty of 1854, and the settlement and adjustment of the losses and damages which had been sustained by the Indians, as set forth in article 11, other and greater damages and injuries were suffered by the Shawnees.

The Civil war begun in 1861 and ended in 1865–6. During this period the armies of the United States camped upon and marched over the lands and territories of the Shawnee Indians, and while in occupancy of the lands the Army seized and appropriated horses, cattle, sheep, hogs and provisions for the maintenance of the Army, and to carry on Army operations. It was an appropriation of private property for public use. The schedule attached to, and made a part of the petition in this case, shows that of the $530,000 worth of property taken, more than $500,000 consisted of live stock and provisions, and the letter of the Commissioner of Indian Affairs (p. 12) says, that "it is apparent from an examination of the evidence that the Government had the use for its troops of a large amount of the property taken." The Indians were literally robbed of their property at a time when they were friendly and loyal to the Government, and many of them were soldiers in the Union Army. All this too at a period when the United States was bound by solemn treaty obligations to protect these Indians and vindicate their rights. The Government, without any treaty or statute, would be liable for the appropriation of

the property of a private citizen by the Army. How much stronger and higher is its obligation when the property is taken from its wards, those who by treaty are held to be under its especial care?

It will not be disputed that with, or without, a treaty, the United States would be liable to compensate a person for property taken and appropriated for the use of the army or any other public use. If the Government takes the cattle or lands of the farmer, the law implies a promise to pay for it. This doctrine has been maintained for many years by all the courts, and especially by this court.

The Constitution of the United States expressly provides:

> "That no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

This doctrine is firmly imbedded in the Constitution. The Shawnee Indians were entitled to the benefit of this provision as much as was any citizen of the United States. It was, and is, their right, independent of any treaty obligation.

In addition to the general implied promise of the Government to pay for property taken, we have in the present case the special agreement to protect and vindicate the rights of the Shawnees, and among their rights is that of compensation for the property appropriated. The United States has given its bond to pay this money. It has been signed, sealed and delivered in the form of a solemn treaty. The faith of the Government is pledged to these people.

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The case here presented is founded in the highest equity. It appeals to every man's sense of justice. These people were living upon lands where they had been placed by the Government in consideration of the surrender of other lands with the promise of protection. They were engaged in the peaceful occupation of cultivating their farms; they had reared cattle, horses and other live stock; they had raised wheat, corn and other vegetable products; they had accumulated property, and had given themselves up to the arts of industry and peace; and they were loyal to the Union and obedient to its laws. When the army of the United States entered upon and despoiled their lands, seized and appropriated their property to government use, every consideration of honesty and good faith requires that the Government should grant them adequate relief, and it is believed that their appeal will not be made in vain.

V.

OFFICIAL CONTEMPORANEOUS INTERPRETATION.

Action of the Interior Department.

Fully recognizing the obligations of the Treaty, the Secretary of the Interior, as soon as it was made known to him that injuries were being sustained by the Indians, or that their property had been appropriated, ordered an inquiry to be made as to the extent and nature of such injuries. He thereupon appointed an agent of the Government to make an investigation of the subject and to take testimony. A large amount of testimony was taken and a report made by the agent to the Commissioner of Indian Affairs and to the Secretary of the Interior.

On the 23rd day of January, 1867, Lewis V. Bogy, Commissioner of Indian Affairs, addressed a communication to the Hon. O. H. Browning, Secretary of the Interior (Rec., pp. 11 and 12). We quote from such communication as follows:

> Sir: I have the honor to transmit herewith for your consideration sundry papers relative to the claims of Shawnee Indians, of Kansas, for indemnity for losses sustained by them during and since the late rebellion. These papers comprise copies of the letter of Agent Abbott transmitting them to this office and of a communication by the Shawnee Council upon the subject, besides the original report of Agent Abbott, before the testimony was taken, and the affidavits to establish the claims.
>
> "The council base these claims upon the right of the Indians to protection from the Government of the United States while themselves observing their treaty stipulations, and reference is made for precedent to previous acts of Congress recognizing that right, particularly to article 11 of the Shawnee treaty of 1854, by which the sum of $27,000 was provided to be paid for losses of the Shawnees by immigrants passing through their country, and to Chapter XL of the laws of 1860 (vol. XII, Stat. at L., p. 15), by which the Government appropriated $36,711 for the payment of losses of these Indians during the then recent troubles of Kansas. The list of claims now presented, as stated in Agent Abbott's report, amounts to $106,928.75, but on examination of the papers, errors are found to exist, a correction of which makes the proper footing $109,746.25. * * *
> The course taken in 1860, when the Shawnee claims came under consideration by this office, was to refer the matter to the department, with the recommendation that Congress be requested to place an appropriation at the disposal of the department sufficient to pay the claims, so much of

the amount to be paid to the claimants as shall be found on further examination to be rightfully due. The same course is now recommended and for the following reasons, to-wit:

"1st. The Shawnees, as a friendly tribe, strictly regarding their treaty stipulations with the Government and abstaining from acts of private revenge or retaliation, but relying upon the good faith of the Government, are entitled to its protection under the 14th article of the treaty of 1854 and to remuneration for losses sustained at the hands of its citizens.

"2d. It is apparent from an examination of the evidence that the Government had the use for its troops of a large amount of the property taken.

"3d. There is an abundant *prima facie* case established to justify the department in asking Congress for an appropriation of a sufficient amount to meet the claims, and then the department can proceed to take such additional evidence as may be deemed necessary to enable it to do substantial justice in the premises."

Very respectfully, your obedient servant,

Hon. O. H. Browning,
Secretary of the Interior.

Lewis V. Bogy,
Commissioner.

Here is an interpretation by the Commissioner of Indian Affairs of Section 14 of the Treaty of 1854, and it is also made to appear that the damages sustained by the Indians arose, in a large part, by the use of the property of the Indians for the purpose of its troops and army operations. The claim of the Indians is, therefore, founded in the highest equity. Similar damages sustained by an American citizen would entitle him to

bring an action in the Court of Claims against the Government, under the General Statutes, without any reference to treaty obligations.

The case here presented is much stronger. The obligation of the Government arises out of a treaty, and that treaty made with its wards, and whose rights it is under the highest obligation to protect. The communication made by the Commissioner of Indian Affairs to the Secretary of the Interior was, by the Secretary, forwarded to the Chairman of the Committee on Appropriations of the House of Representatives in a letter of January 30, 1867, which reads as follows:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *January 30, 1867.*

Hon. THAD'S STEVENS, *Chairman Committee on Appropriations, House of Representatives.*

SIR: I have the honor to transmit herewith a copy of a communication, dated the 23d instant, from the Commissioner of Indian Affairs and accompanying papers submitted by him to this Department in relation to claims of Shawnee Indians of Kansas for indemnity for losses sustained by them during and subsequent to the late Rebellion, and who rely upon the stipulations of the 14th article of their treaty with the United States, of 10th May, 1854, 'to have their rights vindicated.' These papers comprise copies of the letter of Agent Abbott and of a communication by the Shawnee council upon the subject.

"The claims presented to the Department amount to $109,746.25, and in view of the facts set forth in the papers now enclosed the subject is commended to the favorable consideration of your committee.

"The report of Agent Abbott, a list of the Shaw-

nee claims, and the evidence sustaining the same are also herewith submitted.

"Very respectfully, your obedient servant,

(Signed.) O. H. BROWNING, *Secretary.*"

Here is again a recognition by the Secretary of the Interior of the justice of the claim, and the fact that it is made upon and under the stipulations of the 14th article of their treaty with the United States, of May 10, 1854, to have their rights *vindicated.* And it will be seen that the Secretary of the Interior recommends the subject to the favorable consideration of the House committee.

The understanding which the Government of the United States had of the meaning, force and effect of Section 14 of the Treaty of 1854, is made apparent. It is as if the treaty had said in express terms; We, the Shawnee Indians, acknowledge our dependence upon the Government; we will abstain from the commission of depredations; we will abide by the laws, and as if the Government on *its* part had said, in consideration of this; we will give you absolute protection, and indemnify and pay you for whatever losses you may sustain by reason of wrongs and injuries committed by the citizens or soldiers of the United States.

VI.

We insist that this is a fair and just construction and intrepretation of the Treaty of 1854, and that the Secretary of the Interior and the Commissioner of Indian Affairs were right in their interpretation of Section 14, and that there is now a substantial legal obligation on the part of the United States to pay these Indians for the damages which they have sustained.

The Construction of Treaties Should be Favorable to the Indians.

The Supreme Court of the United States has been called upon, in several instances, to give a construction to treaties made between the Indians and the United States, and in every instance, so far as we have been able to observe the court has given a construction favorable to the Indians. It looks upon them as persons entitled to the protection of the United States, and subject to the peculiar care of the Government. It treats the subject as a case between guardian and ward.

In the case of *Worcseter vs. The State of Georgia, 6. Peters, 515*, there is a discussion, to a certain extent, of this subject and of Indian treaties. Mr. Chief Justice Marshall, in delivering the opinion of the court, on page 582, says :

> "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word 'allotted', in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.
>
> "The question may be asked, is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties ?

"The inquiry is not, what station shall now be given to the Indian tribes in our country? But, what relation have they sustained to us, since the commencement of our Government?

"We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligations of such treaties?"

Applying the rule laid down by Mr. Chief Justice Marshall to the case under consideration, can there be any doubt as to what was the intention and expectation of the Shawnees at the time of the execution of the Treaty of 1854? The Government had agreed to protect them, had treated them as its wards, had paid damages for injuries they had sustained by reason of the depredations of the whites and soldiers upon their property, and they had every reason to believe that the same protection, the same care, and a like compensation for injuries sustained would be continued in the future as in the past.

The rule announced by Justice Marshall, above stated, is adhered to in the case of the Kansas Indians, reported in 5 Wall., p. 737. It is announced in the third paragraph of the syllabus, that the rules of interpretation favorable to the Indian tribes, are to be adopted in considering our treaties with them.

Mr. Justice Davis, in delivering the opinion of the Court, adopts the language of the Chief Justice and gives it his approval.

CONCLUSION.

We Therefore Respectfully Submit—

First. That the Court of Claims has jurisdiction of this

case; that under the statutes of October 1, 1890, and the supplementary act of July 6, 1892, the Shawnee Indians were authorized, either as individuals or by a trustee acting for them, to sue and recover for claims of every description whatsoever, and upon all contracts, express or implied.

Second. That the Shawnee Indians are the wards of the nation and under its especial care, and that all treaties between them and the United States should be favorably construed.

Third. That the treaty of May 10, 1854, is a contract by which the United States agreed to protect and vindicate the rights of the Shawnees; that among the rights to be protected and vindicated is that of the peaceable use and enjoyment of their lands and property; that, if their property is taken from them by white citizens or soldiers of the United States it is the duty of the Government to make good the losses so sustained, and that this is especially so where their property has been taken and appropriated for the support of the Army or any other public use; that under the Constitution of the United States it is the right of the Indians to have just compensation, and the terms of the treaty require the Government to maintain this right and answer in damages for the injury done.

JOHN C. CHANEY,
ALPHONSO HART,
Attorneys for Appellant.

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Office Supreme Court U. S.
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APR 27 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OF THE SHAWNEE TRIBE OF INDIANS, FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, *Appellant*,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

SUPPLEMENTAL BRIEF OF APPELLANT.

I.

Appellant by his counsel respectfully begs leave to submit the following:

Bearing upon the construction and meaning of the act of October 1, 1890 and the act of July 6, 1892, we call attention to the title of the last named act, which reads as follows:

> "An act supplementary and amendatory to an act entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation and for other purposes,' approved October first, eighteen hundred and ninety."
> United States Statutes at Large, vol. 27, page 86

The foregoing title is significant. It shows that the two acts are to be considered and read as one act, and in construing the same, all the sections are to be considered. It further shows that the legislation was intended to cover and relate to the rights of the Indians as individuals as well as tribes. Not only in the title of the act, but in many parts of the body of the act, they are spoken of as Shawnee and Delaware Indians.

The question of the jurisdiction of the Court seems to have been an after thought upon the part of counsel for the Government; for the subject of jurisdiction is not raised at all, by the pleadings. The demurrer filed is solely upon the ground that "the amended petition does not allege facts sufficient to constitute a cause of action," and we submit that the cause stated in the demurrer is the only one properly before the Court.

II.

Congressional Recognition of Treaty.

On page 27 of our brief we have, under the head of "Official Contemporaneous Interpretation," called attention to the action of the Interior Department. We wish also to call attention to the action of Congress bearing upon this subject.

After the Treaty of 1854 was made, and between that and 1860, the Shawnees were subjected to further loss and damage. They appealed to Congress claiming that under the treaty they should be compensated for their losses, and on the 9th day of May, 1860, an act was passed entitled "An act to provide payment for depredations committed by whites upon the Shawnee Indians in Kansas Territory." (Vol. 12, Stat. at Large, p. 15).

The first section reads as follows:

> "That for the purpose of paying claims of certain members of the Shawnee tribe of Indians

> presented to Congress at its present session, for depredations committed upon their property by citizens of the United States, there is hereby appropriated out of any money in the Treasury not otherwise appropriated, the sum of thirty-six thousand seven hundred and eleven dollars."

The second section of the act relates to the manner of payment.

The above act is a recognition by Congress of the obligations of the United States to pay for damages sustained by the Indians, and is an interpretation of the 14th section of the Treaty of 1854. It is the same act referred to by Mr. Bogy, Commissioner of Indian Affairs, in his letter to the Secretary of the Interior, of January 23, 1867, relating to the claims which are sued for in this action.

We contend, therefore, that our construction of the treaty is approved both by the legislative and executive branches of the government.

III.

Relation Between Government and Indians Stated.

On page 32 of our brief we have called attention to the action of the Supreme Court of the United States bearing upon the interpretation of treaties between the Government and the Indians. In this connection we respectfully refer also to the case of the Cherokee Nation against the State of Georgia, 5 Peters, p. 1.

Mr. Chief Justice Marshall in considering the relation which exists between the United States and the Indians says:

> "If courts were permitted to indulge their sympathies, a case better calculated to excite them

can scarcely be imagined. A people once numerous powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties, each of which contains a solemn gurantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable existence.

* * * * * * * * *

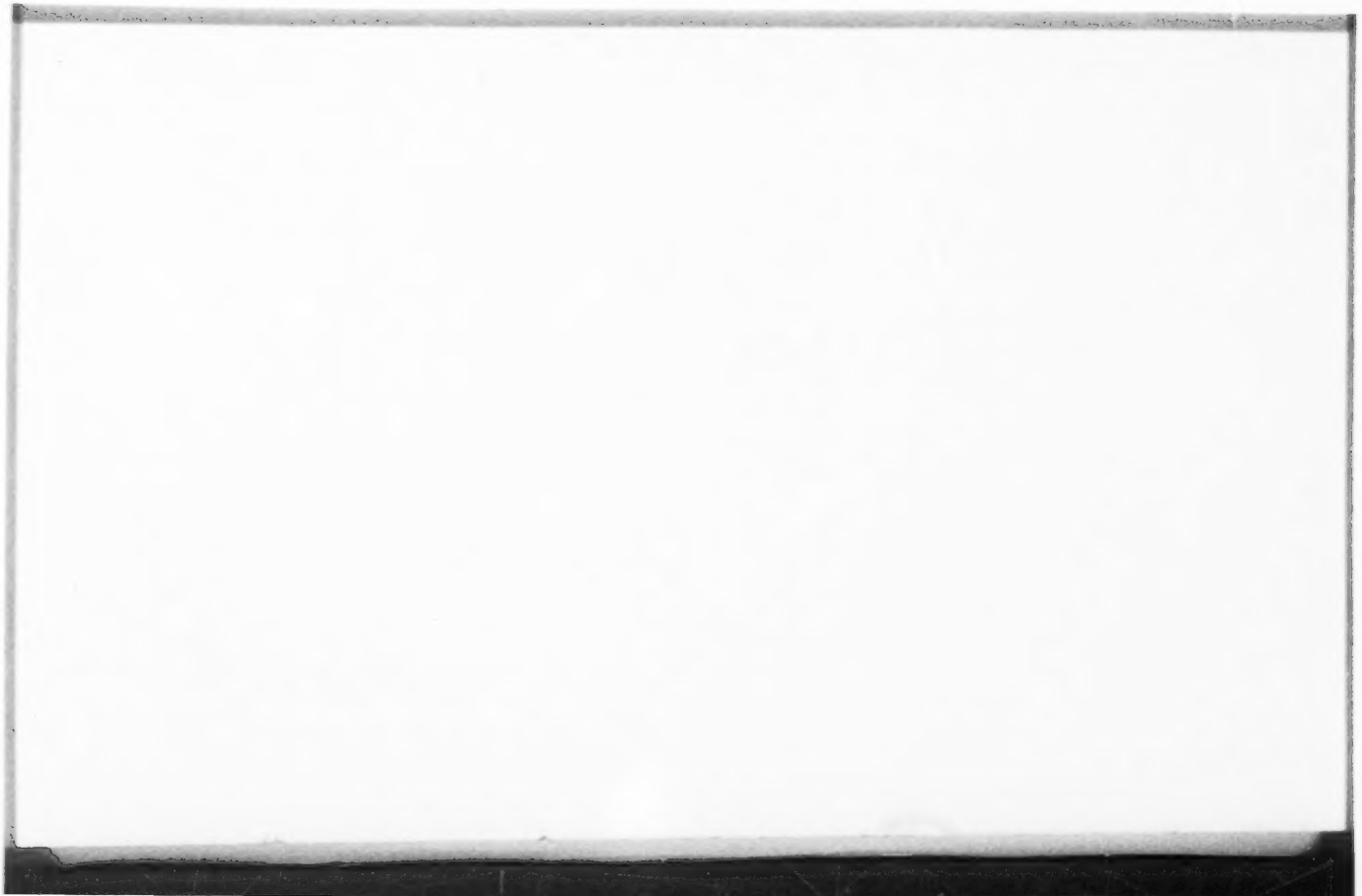
"Though the Indians are ackonwledged to have an unquestionable and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession when their right of posession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

"They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father."

The above decision is expressive of the relation which exists between the United States and the Indian.

Respectfully submitted,

JOHN C. CHANEY,
ALPHONSO HART,
Attorneys for Appellant.



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In the Supreme Court of the United States.

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v.
THE UNITED STATES.
} No. 276.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WILLIAM H. BUTTON,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

JOHNSON BLACKFEATHER, PRINCIPAL CHIEF, etc., appellant,
v.
THE UNITED STATES.

No. 276.

BRIEF FOR UNITED STATES.

STATEMENT.

The petition in this case was filed August 3, 1892, and the United States demurred on the ground that it appears from the petition that the Court of Claims had no jurisdiction of the action, and because the petition fails to state facts enough to constitute a cause of action against the United States. The Court of Claims sustained the demurrer on the ground that the petition does not state a cause of action, and entered judgment accordingly. This is an appeal by the claimant from such judgment.

The following facts appear from the petition:

Johnson Blackfeather is the principal chief of the Shawnee Indians. He brings this suit as such chief under the provisions of an act of Congress approved in 1890, which is attached to and made a part thereof

as "Exhibit A," and under a supplemental act, approved July 6, 1892, attached to and made a part of said petition as "Exhibit B."

Said acts are as follows:

EXHIBIT A.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen of the treaty of July nineteenth, eighteen hundred and sixty-six, made by and between the United States and the Cherokee Nation, and articles of agreement made by and between the Cherokee Nation and the Shawnee Indians, June seventh, eighteen hundred and sixty-nine, approved by the President June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians April eighth, eighteen hundred and sixty-seven; and also of the Cherokee freedmen, who are settled and located in the Cherokee Nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six in respect to the subject-matter herein provided for.

SEC. 2. That the said Shawnees, Delawares, and freedmen shall have a right, either sepa-

rately or jointly, to begin and prosecute a suit or suits against the Cherokee Nation and the United States Government to recover from the Cherokee Nation all moneys due, either in law or equity, and unpaid to the said Shawnees, Delawares, or freedmen, which the Cherokee Nation have before paid out, or may hereafter pay, per capita, in the Cherokee Nation, and which was, or may be, refused to or neglected to be paid to the said Shawnees, Delawares, or freedmen by the Cherokee Nation out of any money or funds which have or may be paid into the treasury of, or in any way have come, or may come, into the possession of the Cherokee Nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of ninety six degrees west longitude, and which have been, or may be, appropriated and directed to be paid out per capita by the acts passed by the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said Shawnees, Delawares, or freedmen under the provisions of the aforesaid articles of the treaty and articles of agreement.

SEC. 3. That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen, and in their behalf and for their use in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of such Indians be impaired by any acts passed and improved by the Cherokee

national council. Suits may be instituted within twelve months after the passage of this act, and the law and practice and rules of procedure in such courts shall be the practice and law in these cases; and copies of the petitions filed in the case at the commencement of the suit shall be served upon the Attorney-General of the United States and on the principal chief of the Cherokee Nation by the marshal of the district court for the Indian Territory; and that the costs of the said suits shall be apportioned between the United States and the other parties to such suits as to said court law and equity shall require. The Attorney-General shall designate and appoint from the Department of Justice a person who is competent to defend the said Cherokee Nation and the United States. And the said Shawnees, Delawares, and freedmen may be represented by attorneys and counsel. And the court is hereby authorized to decree the amount of compensation of such attorneys and counsel fees, not to exceed ten per centum of the amount recovered, and order the same to be paid to the attorneys and counsel of the said Shawnees, Delawares, and freedmen; and all judgments for any sum or sums of money which may be ordered or decreed by such court in favor of the Shawnees, Delawares, or freedmen, and against the Cherokee Nation, shall be enforced by the said court or courts against the said Cherokee Nation by execution, mandamus, or in any other way which the said court may see fit.

SEC. 4. That the said Shawnee Indians are hereby authorized and empowered to bring and

begin a suit in law or equity against the United States Government in the Court of Claims, to recover and collect from the United States Government any amount of money that in law or equity is due from the United States to said tribes in reimbursement of their tribal fund for money wrongfully diverted therefrom. The right to appeal, jurisdiction of the court, process, procedure, and proceedings in the suit here provided for shall be as provided for in sections one, two, and three of this act.

Approved October 1, 1890.

Exhibit B.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October first, eighteen hundred and ninety, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," shall present to the said court all their claims against the United States and the Cherokee Nation, or against either or both of them, of every description whatsoever, arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts expressed or implied, under such treaties, made and entered into by and between

the said Shawnees and Cherokees, and between them, or either of them, and the United States.

Approved July 6, 1892.

The petition states that the purpose of the action is—

> To recover and collect from the United States Government the several respective and aggregate amounts of money herein alleged and set out in payment for the destruction, loss, forcibly taking, carrying, and driving away live stock, farm products, household goods, money, and other personal property of divers description and kinds, belonging to, and possessed by, and the property of the said Shawnee Indians, by white United States citizens and soldiers in the State of Kansas and the Indian Territory at divers times and places in the year 1861 and all the time up to and including the year 1866, as more fully appears in the following descriptive list or schedule.

The petition sets forth a schedule containing the names of a large number of individual claimants, together with the description of property taken from each and the value thereof, amounting in the aggregate to the sum of $530,945.14. It is further stated that the claims arise out of treaty relations with the United States, to wit, out of articles 11 and 14 of the treaty of May 10, 1854, and from the Statutes U. S. R. S., sec. 2154 and sec. 2155, all of which sections are set forth in "Exhibit C" and made a part of said petition.

Said sections are as follows:

> ARTICLE 11. It being represented that many of the Shawnees have sustained damage and

loss and destruction of their crops, stock, and other property, and otherwise, by reason of the great emigration which has for several years passed through their country, and of other causes, in violation, as they allege, of guarantees made for their protection by the United States, it is agreed that there shall be paid in consideration thereof, to the Shawnees, the sum of twenty-seven thousand dollars, which shall be taken and considered in full satisfaction not only of such claim but of all others of what kind soever, and in release of all demands and stipulations arising under former treaties, with the exception of the perpetual annuities amounting to three thousand dollars, hereinbefore named, and which are set apart and appropriated in the third article hereof. All Shawnees who have sustained damages by the emigration of citizens of the United States, or by other acts of such citizens, shall, within six months after the ratification of this treaty, file their claims for such damages with the Shawnee agent, to be submitted by him to the Shawnee council for their action and decision, and the amount in each case approved shall be paid by the said agent: *Provided*, The whole amount of the claims thus approved shall not exceed the said sum stipulated for in this article: *And provided*, That if such amount shall exceed the sum, then a reduction shall be made *pro rata* from each claim until the aggregate is lowered to that amount. If less than that amount be adjudged to be due, the residue, it is agreed, shall be appropriated as the council shall direct.

ARTICLE 14. The Shawnees acknowledge their dependence on the Government of the United States, and invoke its protection and care. They will abstain from the commission of depredations, and comply, as far as they are able, with the laws in such cases made and provided, as they will expect to be protected and to have their rights vindicated.

Revised Statutes, section 2154, which is the act of June 30, 1834 (4 Stats., p. 731):

> Whenever, in the commission, by a white person, of any crime, offense, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed.

Revised Statutes, section 2155, which is the act of June 30, 1834 (4 Stat., p. 731):

> If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender can not be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States for such property if he, or any of the nation to

> which he belongs, have sought private revenge or have attempted to obtain satisfaction by any force or violence.

It is further stated that all the property claimed was taken after the treaty of May 10, 1854, was entered into; that said Indians at the time were in amity with, and have always been loyal to, the United States.

The petition prays that judgment be entered in favor of the individuals mentioned, for the respective sums set opposite their names, and that 10 per cent of said amounts be allowed the attorneys for their services.

ARGUMENT.

THE COURT OF CLAIMS HAD NO JURISDICTION.

It is evident that the Court of Claims has no jurisdiction in said suit, unless it is by virtue of the acts of 1890 and 1892, above quoted. All of these claims arose between 1861 and 1866, and are, of course, long since barred by the statute of limitations, unless such bar is removed by the acts mentioned. (U. S. R. S., 1069.) This bar of the statute of limitations appears on the face of the petition, and under the well-known principles of procedure that govern the Court of Claims it is unnecessary that the statute be taken advantage of by plea. In the case of *Finn* v. *United States* (123 U. S., 227), this court stated, at page 232:

> The general rule that limitation does not operate by its own force as a bar, but is a defense, and that the party making such a defense must plead the statute if he wishes the benefit of its provisions has no application to suits in

> the Court of Claims against the United States. An individual may waive such a defense, either expressly or by failing to plead the statute; but the Government has not expressly or by implication conferred authority upon any of its officers to waive the limitation imposed by statute upon suits against the United States in the Court of Claims. Since the Government is not liable to be sued, as of right, by any claimant, and since it has assented to a judgment being rendered against it only in certain classes of cases, brought within a prescribed period after the cause of action accrued, a judgment in the Court of Claims for the amount of a claim which the record or evidence shows to be barred by the statute would be erroneous.

Unless it is by virtue of the two acts mentioned the suit is also barred by R. S. sec. 1066. In fact the appellant states that his action is based upon the acts of 1890 and 1892. It therefore becomes necessary to consider whether or not these two acts contain authority for the bringing of this suit. It will be noticed that this action is not brought to recover any sums that are due to the Shawnee Tribe of Indians as a tribe, but is brought to recover amounts due to individual Indians.

The first section of the act of 1890 provides that the Court of Claims shall have jurisdiction to determine the rights of the Shawnee and Delaware Indians under certain articles in the treaties of *July 19, 1866*, *July 7, 1869*, and *April 8, 1867*.

It is evident that the suit can not be maintained

under this section because it is confined to certain treaties, of which the treaty of 1854, under which this action is brought, is not one.

In section 2 it is provided that the Shawnees, Delawares, and Freedmen may prosecute a suit against the Cherokee Nation and the United States to recover from the Cherokee Nation certain sums which that nation did not pay to such tribes under the provisions of the treaties mentioned in section 1 of the act. It is evident that this suit can not be maintained under this section, as it allows nothing but a recovery against the Cherokee Nation.

Section 3 prescribes the method of procedure to be pursued in said suit, and emphasizes the fact that the act was intended to give the right of action to the tribes of Shawnees and Delawares, as such, as it provides that the suit may be in the name of the principal chiefs of said Indians.

Section 4 of the act provides that the Shawnee Indians may bring suit against the United States to recover money due from the United States "in reimbursement of their tribal fund." It is evident that this suit can not be maintained under this section, as it is not a suit for reimbursement of tribal funds. Consequently the suit can not be brought under the act of 1890.

The act of 1892 was evidently intended to extend the rights of action provided for in the act of 1890 to those which arose under any treaty and not confine them to the treaties mentioned in the act of 1890. It

does not, however, seem to be intended to allow suits on behalf of individuals, but to allow such suits only as could be brought in favor of the tribes as such.

In the first place, this is evident from the description of those who are authorized to bring suit by the act of 1892. It is stated that the Shawnee tribe or band of Indians shall present all their claims to the Court of Claims. It is not provided, however, that any individuals of this tribe shall have that privilege.

In the next place, there is a clause which qualifies the meaning of the "Shawnee tribe or band of Indians." The clause describes that tribe or band of Indians as those

> whose claims or demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October 1, 1890.

It has already been pointed out that the claimants whose claims were referred to the Court of Claims by the act of 1890 were strictly confined to the various tribes and bands of Indians as such. Consequently, when it is specified in this act that the claimants are the same as the claimants whose claims were referred by the former act, it is evident that it was not intended that any others should be entitled to bring suit under the second act than those entitled under the first.

The object of the act of 1892 was to enlarge the number of treaties which could be litigated by the tribes of Indians, and the act evidently had no other purpose.

That this is the meaning of the act of 1892 has been intimated by this court. Under this act several suits were brought, and among others one which came to this court, and which is reported under the title of *United States* v. *Blackfeather* (155 U. S., 180). In that suit it was sought to recover a large amount of money due this same tribe of Shawnee Indians for lands which had been sold by the United States. There was another claim set up in favor of certain individual orphans of said tribe for money which had been due the said orphans from the United States, but had never reached them on account of having been embezzled by the Indian agents. The Court of Claims allowed this item, but on appeal this judgment was reversed by this court, on the ground that at least a portion of the money had been paid to the guardians of the orphans, and that such payment released the United States from further liability. In so deciding this court took occasion to say in regard to these claims on behalf of the orphans that—

> It is by no means certain that under the acts of 1890 and 1892 the Shawnees were authorized to recover or collect from the Government any other moneys than those which were claimed in their tribal relations. The money in question is not due the tribe as such, but to certain individual orphans who claim to have been defrauded.

It is further true that this statute should be strictly construed, so far as a determination of the parties who are entitled to bring suit under it is concerned. This

follows from the fact that the jurisdictional statutes relied upon are statutes which authorize suits against the United States and are in derogation of the sovereignty of the United States. All statutes which take away any part of the inherent sovereignty of any government are subject to strict construction. This has frequently been held in the case of statutes that have authorized the States of the Union to be sued.

Rose v. *The Government* (24 Tex., 496). The statutes of Texas gave the right to sue the Government, or the State of Texas, to those who were authorized by the laws to commence suit against the President of the Republic of Texas, or against the Republic prior to the adoption of the State constitution. In determining who such parties were the court used the following language:

> The right to sue the governor or the State is a matter of favor conferred by the State in derogation of that immunity which every sovereignty enjoys, and we think that statutes conferring such privileges should be construed with strictness, so as to extend the right only to those by whom it was clearly intended that it should be enjoyed (p. 504).

Raymond v. *The State* (54 Miss., 562). The statutes of Mississippi allow suits to be brought against the State in much the same manner that the Federal statutes allow suits to be brought against the United States. In this case, however, it was held that a statute allowing set-offs did not apply to suits by the State against individuals, and such individuals could

not offset in such suits claims which they had against the State. The court said:

> It is admitted that a State can not be sued in its own courts, unless it has expressly consented to abrogate the prerogative of sovereignty and allow itself to be sued. A statute permitting such suits would be in derogation of its sovereignty and would be construed strictly. The rule on this subject was very clearly stated in *State* v. *Joiner*, 23 Miss., 500; *Parmilee* v. *McNutt*, 1 S. M., 197; *Josselyn* v. *Stone*, 28 Miss., 753.

In the case at bar it is sought to extend the right to sue to those who are not expressly mentioned in the jurisdictional statutes. Under the rules of construction above laid down such is not the meaning of these statutes.

NO CAUSE OF ACTION IS STATED.

If the court is of the opinion that the acts of 1890 and 1892 are sufficiently broad to allow claims on behalf of individual Indians, it is still true that the petition shows no cause of action against the United States in behalf of said individuals. Articles 11 and 14 of the treaty of May 10, 1854, and United States Revised Statutes, sections 2154, 2155, are stated in the petition to be the basis of the claims (p. 11). These statutes and treaty provisions have already been quoted. Article 11 of the treaty of May 10, 1854, provides for the payment to the Shawnee Indians of the sum of twenty-seven thousand dollars ($27,000), to be distributed upon proof made to the Shawnee

agent, and to be in full for all claims to the date of said treaty, arising out of damage, loss and destruction of property belonging to said individual Indians. If the claims proved should turn out to be more than twenty-seven thousand dollars ($27,000), they were to be paid *pro rata*. It is evident that this provision was simply for claims that accrued prior to the date of that treaty, and is a provision for their discharge in full. It is certain that no claims arising between 1861 and 1866, as the petition states these claims did arise, can be included within this article of the treaty. Article 14 of the treaty is equally devoid of any foundation for these claims; in it the Shawnees acknowledge their dependence upon the United States, and state that they will expect to be protected and have their rights vindicated. This article, however, can not be interpreted into an agreement to pay for all property that is stolen or destroyed by white citizens. These are the only treaty provisions anywhere mentioned as a foundation for this action. The two sections of the Revised Statutes quoted are equally devoid of any foundation for this action. They provide that when a white citizen is convicted of any offense within the Indian country, whereby the property of a friendly Indian is appropriated, such person shall be sentenced to pay the Indian the value of his property, and the next section provides that if such offender shall be unable to pay such amount, then the United States will pay it. It is not stated in the petition that any white persons were ever tried or con-

victed for the spoliation of any of the property claimed; consequently the above provision does not give any right of action. It is further provided in the last section that if such offender can not be apprehended and brought to trial, then the United States will pay the Indian the value of his property. It is not stated, however, in the petition that any effort was made to apprehend the parties guilty of the spoliation, nor that they could be convicted; consequently this provision will not help the claimant.

Furthermore, if it should be determined that the above suggestions are not insuperable obstacles to the maintenance of this suit, a reference to these jurisdictional statutes will show that the bar of the statute of limitation is not removed as to any claims, except those that arise out of treaty stipulations, and it is not removed as to those causes of action that might arise from the United States Statutes. It has been pointed out that these individual claims are certainly not covered by the act of 1890, and if covered by any act, it must be the act of 1892. The claims under the statutes, however just, can not be adjudicated under the act of 1892, even if that act may be extended to claims in favor of individual Indians, for it is confined to such claims "arising out of treaty relations of the United States, rights growing out of such treaties and from contracts expressed or implied under such treaties, made and entered into by and between the said Shawnees and Cherokees and between them, or either of them."

This certainly does not give jurisdiction to enter judgment for claims under sections 2154 and 2155 of the Revised Statutes, and such claims are barred.

The judgment of the Court of Claims should be affirmed.

WILLIAM H. BUTTON,
Special Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

O

Supreme Court of the United States.

No. 276.—October Term, 1902.

Johnson Blackfeather, the Principal Chief of the Shawnee Tribe of Indians, &c., Appellant,
vs.
The United States.
} Appeal from the Court of Claims.

[June 1, 1903.]

The petitioner filed his amended petition in the Court of Claims in August, 1892, in which he asked to recover from the United States over five hundred and thirty thousand dollars on the grounds therein set forth. There was a demurrer to the amended petition by the United States on the ground that it did not allege facts sufficient to constitute a cause of action. The demurrer was sustained, and the plaintiff has appealed to this court.

In his petition the petitioner represents himself as a Shawnee Indian by blood and descent, a member and the principal chief of the Shawnee Tribe or Nation, and residing in the Indian Territory. He states that he brings suit in the Court of Claims as such principal chief of such Shawnee Tribe or Nation under the provisions of two acts of Congress, the first of which is entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," approved October 1, 1890, (26 Stat. 636,) and the second entitled "An act supplementary and amendatory to an act entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes, approved October 1, 1890,' approved July 6, 1892." (27 Stat. 86.) These acts are set out in the margin.*

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*Act of 1890. (26 Stat. 636.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen of the treaty of July nineteenth, eighteen hundred and sixty-six, made by and between the United States and the Cherokee Nation, and articles of agreement made by and between the Cherokee Nation and the

The petitioner asks to recover and collect from the United States the several amounts of money thereafter set out at length in payment for the destruction, loss, forcible taking, carrying and driving away live stock, farm products, household goods, money and other personal property of divers descriptions and kinds belonging to, owned and possessed by and the property of the said Shawnee Indians, by white and United States citizens and soldiers, in the State of Kansas and the Indian Territory, at divers times and places in the year 1861, and all the time up to and including the year 1866. Reference is then made to a schedule which is made part of the petition, and in which appear the names of between three and four hundred Indians, and the schedule gives their individual

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Shawnee Indians, June seventh, eighteen hundred and sixty-nine, approved by the President June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians April eighth, eighteen hundred and sixty-seven; and also of the Cherokee freedmen, who are settled and located in the Cherokee Nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six in respect to the subject matter herein provided for.

SEC. 2. That the said Shawnees, Delawares and freedmen shall have a right, either separately or jointly, to begin and prosecute a suit or suits against the Cherokee Nation and the United States Government to recover from the Cherokee Nation all moneys due, either in law or equity, and unpaid to the said Shawnees, Delawares or freedmen, which the Cherokee Nation have before paid out, or may hereafter pay, per capita, in the Cherokee Nation, and which was, or may be, refused or neglected to be paid to the said Shawnees, Delawares or freedmen by the Cherokee Nation out of any moneys or funds which have or may be paid into the treasury of, or in any way have come, or may come, into the possession of the Cherokee Nation, Indian Territory,' derived from the sale, leasing or rent for grazing purposes on Cherokee lands west of ninety-six degrees west longitude, and which have been, or may be, appropriated and directed to be paid out per capita by the acts passed by the Cherokee Council, and for all moneys, lands and rights which shall appear to be due to the said Shawnees, Delawares or freedmen under the provisions of the aforesaid articles of treaty and articles of agreement.

SEC. 3. That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen, and in their behalf and for their use in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior. And the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of such Indians be impaired by any acts passed and approved by the Cherokee National Council. Suits may be instituted within twelve months after the passage of this act, and the law and practice and rules of procedure in such courts shall be the practice and law in these cases; and copies of the petitions filed in the case at the commencement of the suit shall be served upon the Attorney General of the United States and on the principal chief of the Cherokee Nation by the marshal of the District Court for the Indian Territory; and that the costs of the said suits shall be apportioned between the United States and the

claims, varying in amounts from as high as $7,000 down to $75, and aggregating $530,945.14.

It is contended that the claims arise out of treaty relations with the United States, (mentioned in the foregoing acts of Congress,) particularly articles 11 and 14 of the treaty of May 10, 1854, (10 Stat. 1053, 1057,) between the United States and the Indians, and also out of sections 2154 and 2155 of the Revised Statutes of the United States. The articles of the treaty are as follows:

"ARTICLE 11. It being represented that many of the Shawnees have sustained damage and loss and destruction of their crops, stock and other property, and otherwise, by reason of the great emigration which has for several years passed through their country, and of other causes, in viola-

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other parties to such suits as to said court, law and equity shall require. The Attorney General shall designate and appoint from the Department of Justice a person who is competent to defend the said Cherokee Nation and the United States. And the said Shawnees, Delawares and freedmen may be represented by attorneys and counsel. And the court is hereby authorized to decree the amount of compensation of such attorneys and counsel fees, not to exceed ten per centum of the amount recovered, and order the same to be paid to the attorneys and counsel of the said Shawnees, Delawares and freedmen; and all judgments for any sum or sums of moneys which may be ordered or decreed by such court in favor of the Shawnees, Delawares or freedmen, and against the Cherokee Nation, shall be enforced by the said court or courts against the said Cherokee Nation by execution, mandamus, or in any other way which the said court may see fit.

SEC. 4. That the said Shawnee Indians are hereby authorized and empowered to bring and begin a suit in law or equity against the United States Government in the Court of Claims, to recover and collect from the United States Government any amount of money that in law or equity is due from the United States to said tribes in reimbursement of their tribal fund for money wrongfully diverted therefrom. The right to appeal, jurisdiction of the court, process, procedure and proceedings in the suit here provided for shall be as provided for in sections one, two and three of this act.

Act of 1892. (27 Stat. 86.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October first, eighteen hundred and ninety, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes," shall present to the said court all their claims against the United States and the Cherokee Nation, or against either or both of them, of every description whatsoever, arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, expressed or implied, under such treaties, made and entered into by and between the said Shawnees and Cherokees, and between them, or either of them, and the United States.

tion, as they allege, of guarantees made for their protection by the United States, it is agreed that there shall be paid in consideration thereof, to the Shawnees, the sum of twenty-seven thousand dollars, which shall be taken and considered in full satisfaction, not only of such claim but of all others of what kind soever, and in release of all demands and stipulations arising under former treaties, with the exception of the perpetual annuities, amounting to three thousand dollars, hereinbefore named and which are set apart and appropriated in the third article hereof. All Shawnees who have sustained damages by the emigration of citizens of the United States, or by other acts of such citizens, shall, within six months after the ratification of this treaty, file their claims for such damages with the Shawnee agent, to be submitted by him to the Shawnee council for their action and decision, and the amount in each case approved shall be paid by the said agent: *Provided*, The whole amount of the claims thus approved shall not exceed the said sum stipulated for in this article: *And provided*, That if such amount shall exceed the sum, then a reduction shall be made *pro rata* from each claim until the aggregate is lowered to that amount. If less than that amount be adjudged to be due, the residue, it is agreed, shall be appropriated as the council shall direct."

"ARTICLE 14. The Shawnees acknowledge their dependence on the Government of the United States and invoke its protection and care. They will abstain from the commission of depredations and comply, as far as they are able, with the laws in such cases made and provided, as they will expect to be protected and to have their rights vindicated."

Section 2154 of the Revised Statutes, which is part of the act of June 30, 1834, (4 Stat. 731,) reads as follows:

"SEC. 2154. Whenever, in the commission, by a white person, of any crime, offense or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured or destroyed, and a conviction is had for such crime, offense or misdemeanor, the person so convicted shall be sentenced to pay such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured or destroyed."

Section 2155 of the Revised Statutes, which is also part of the act of June 30, 1834, (4 Stat. 731,) reads as follows:

"SEC. 2155. If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States for such property if he, or any of the nation to which he belongs, have sought private revenge or have attempted to obtain satisfaction by any force or violence."

It is also stated that at the time the property was taken the Indians were in amity with and had always been loyal to the United States. Judgment was asked in favor of the Indians mentioned for the respective

sums set opposite their names, and that ten per centum of the amount might be allowed the attorneys for their services.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The duty of this court is simply to construe the acts of Congress of 1890 and 1892. The Court of Claims has no jurisdiction of the subject matter of this petition, unless it is conferred by one or the other of the above acts. The moral obligations of the Government toward the Indians, whatever they may be, are for Congress alone to recognize, and the courts can exercise only such jurisdiction over the subject as Congress may confer upon them.

Upon examination of the act of 1890, it appears that jurisdiction is conferred upon the Court of Claims to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee Nation, under the provisions of article 15 of the treaty of 1866, between the United States and the Cherokee Nation, and also under articles of agreement between the Cherokee Nation and the Shawnee Indians, made June 7, 1869, and articles of agreement made with the Delaware Indians, April 8, 1867, and also of the Cherokee freedmen settled, &c., under provisions of article 9 of the treaty of 1866.

The language of the first section, in our opinion, confers jurisdiction upon the Court of Claims to hear and determine the rights in law or equity of the tribes of the Shawnee or Delaware Indians, arising out of the subject matter provided for in the subsequent parts of the act, and there is no grant of jurisdiction to hear or determine the rights of individual members of those tribes. It is true the statute speaks of the Shawnee and Delaware Indians, but the words Shawnee and Delaware Indians mean the tribes and not individual members of those tribes of Indians. The rights must be those which arise out of the subject matter which is referred to in sections 2, 3 and 4 of the act. This is stated in terms in the first section. The subsequent sections of the act show, as we think, that Indian tribes and not individual members thereof are intended. And no jurisdiction is granted to hear claims such as are included in this case, whether they are made by tribes or by individual members of a tribe.

The second section permits a suit against the Cherokee Nation and the United States Government to recover from the Cherokee Nation moneys due and unpaid to the Shawnees, &c., which the Cherokee Nation have before paid out, or may hereafter pay per capita in the Cherokee Nation, and which the Cherokee Nation had refused or neglected to pay to the other Indians. The suits are in reality against the Cherokee Nation, and

the recovery is from that nation. The separate or joint suit mentioned in this section is a separate or joint suit of the tribes and of the freedmen, and not of the individual members thereof. In either event it does not include such a case as this.

Section 3 permits the bringing of "the said suit or suits" in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen in their behalf and for their use, in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior. The exercise of this jurisdiction is not to be barred by any lapse of time heretofore, nor are the rights of the Indians to be impaired by any acts passed and approved by the Cherokee National Council. The right given by the third section is to commence a suit or suits which had already been spoken of in the second section of the act. The second section gave no right to commence this suit, as we have seen. Neither section includes the rights of individual Indians.

A perusal of section 4 shows that the right to bring a suit against the United States, therein provided for, was limited to the purpose of collecting from the United States Government any amount of money that in law or equity may be due from the United States "to said tribes in reimbursement for their tribal fund for money wrongfully diverted therefrom." We think that individual Indians had no right to commence such an action as this under the act of 1890, even though it be assumed that the tribe had such right under that act for the recovery of the value of property taken from the tribe. Such a suit, as the one before us, is plainly not included in the grant of jurisdiction in this section.

By the act of 1892, it is provided that "the Shawnee tribe or band of Indians whose claims and demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication," (under the act of 1890,) "shall present to the said court all their claims against the United States and the Cherokee Nation," &c.

The result is that this act does not grant jurisdiction to the Court of Claims to hear and decide the questions arising under this petition. The grant of jurisdiction is to hear and determine all the claims of the Shawnee tribe or band of Indians.

The claims are those of a tribe or band, and not those of the individual members of the Shawnee tribe or band. The reference in the act of 1892 shows that Congress assumed that whatever their nature, it was the claims of the Shawnee tribe or band that had been referred to the Court of Claims for adjudication by the act of 1890, and not claims of the individual members thereof. The act of 1892 enlarges the scope of the act of 1890 so as to include all claims of the tribe or band, instead of claims of the nature provided for in sections 2, 3 and 4 of the act of 1890, but the claims must be claims of a band and not of an individual.

These acts have been before this court on a previous occasion.

In *United States* v. *Blackfeather*, (155 U. S. 180, 194,) Mr. Justice Brown, speaking for the court, said:

"While there may be a moral obligation on the part of the Government to reimburse the money embezzled by the Indian superintendent, and in fact an appropriation appears to have been made for that purpose, (Act of July 7, 1884, c. 334, 23 Stat. 236, 247,) it is by no means clear that, under the acts of 1890 and 1892, the Shawnees were authorized to recover and collect from the Government any other moneys than those which they claimed in their tribal relation or capacity. The money in question is not due the tribe as such, but to certain individual orphans, who claim to have been defrauded. But whether this be so or not, there is nothing in the record to indicate how much of this money was embezzled by the guardians created by the Indian council, and how much by the Indian superintendent, so that there is in reality no basis for a decree in their favor."

While the question in issue here was, as is seen, not decided in the above case, yet the expression contained in the opinion shows the court was not prepared to hold that the acts embraced claims of individual Indians.

As these statutes extend the jurisdiction of the Court of Claims and permit the government to be sued for causes of action therein referred to, the grant of jurisdiction must be shown clearly to cover the case before us, and if it do not, it will not be implied. Statutes of this nature extending the right to sue the government will generally be strictly construed. We concur with the following remarks of Judge Weldon, contained in the opinion delivered by him in this case in the Court of Claims:

"The act of 1892 seems to have been enacted for the purpose of enlarging the scope of the right given under the act of 1890. But is it sufficiently broad to embrace the individual right of each Indian who may have suffered a depredation at the hands of the persons alleged?

"The statute (1890) is entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes,' and provides, in substance, that they shall present to the said court all their claims against the United States and the Cherokee Nation, or against either or both of them, of any description whatsoever, arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, expressed or implied, under such treaties, made and entered into by and between the said Shawnees and Cherokees, and between them, or either of them, and the United States.

"The right to sue, by the phraseology of this statute, is in the assertion of rights growing out of treaties, and for contracts, expressed or implied, under treaties made and entered into by and between the said Shawnees, Cherokees and the United States. Can it be said that there has been a treaty, a contract, expressed or implied, between the United States and the individual Indians, who, through the medium of the principal chief, are now prosecuting these claims?

"The attention of the court is called to the fourteenth article, (of the treaty of 1854,) which provides that 'the Shawnees acknowledge their dependence on the Government of the United States, and invoke its protection and care. That they will abstain from the commission and depredations and comply, as far as they are able, with the laws in such cases made and approved, as they will expect to be protected and have their rights vindicated.' Does this phraseology establish contractual or treaty relations, having the effect of contracts, with each individual Indian composing the Shawnee tribe? Or, rather, is it not a general clause, limited in its effect to the parties to the treaty, to wit, the United States on one side and the Shawnee tribe upon the other?

"The plaintiff, by the allegations of the petition, has asserted an individual obligation existing between the United States and each of the claimants, and in order to recover it must appear that such a relation exists.

"The United States, as the guardian of the Indians, deal with the nation, tribe or band, and have never, so far as is known to the court, entered into contracts, either expressed or implied, compacts or treaties with individual Indians so as to embrace within the purview of such contract or undertaking the personal rights of individual Indians.

"The acts of Congress, referred to by the allegations of the petition and the argument of counsel for the claimant, are not applicable to the claim made by this petition. The condition upon which remuneration to the Indian is to be made under section 2154, Revised Statutes, is not shown to exist in this case. And so it may be said of section 2155 of Revised Statutes, that the condition upon which the Indian is entitled to remuneration out of the Treasury is not shown to exist in the claims made in this proceeding.

"The act of 1892 specifies that the Shawnee tribe or band of Indians, whose claims and demands against the Cherokee Nation and the United States were referred to the United States Court of Claims for adjudication under the act of Congress passed and approved October 1, 1890, shall present to said court all their claims against the United States. The claims referred to this court under the act of 1890 were the claims of the Shawnee tribe or band of Indians, and not the personal claims of the individual Indians belonging to said tribe or band of Shawnees.

"The evident object of the act of 1892 was to enlarge the jurisdiction of this court with reference to the same class of claims as were cognizable under the act of 1890, to wit, the claims of the Shawnee tribe or band of Indians."

We think it clear that no jurisdiction over this case is granted by the language of the sections of the Revised Statutes above referred to.

We see nothing in the act, approved May 9, 1860, (12 Stat. 15,) appropriating moneys "for the payment of claims of certain members of the Shawnee tribe of Indians," which affects the conclusion we have reached that the acts of 1890 and 1892 refer to tribes and not individuals. The act of 1860 appropriates, in terms, money to pay claims of certain members of the tribe. It is apparent that when Congress intends to include

individuals as distinct from tribes, it does not speak of them as Shawnee Indians, but as "certain members" of the Shawnee tribe.

Congress may, of course, at its pleasure, still confer jurisdiction upon the Court of Claims in such terms as shall, without doubt, cover claims of the nature set forth in this record. In our judgment it has not done so as yet. The judgment of the Court of Claims must be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.